S. HRG. 100-837

# COLUMBIA RIVER FISHERIES MANAGEMENT

---

# HEARING

BEFORE THE

## SELECT COMMITTEE ON INDIAN AFFAIRS
## UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING TO DETERMINE THE STATUS OF AGREEMENTS AND LAWS AFFECTING THE USE OF USUAL AND ACCUSTOMED FISHING PLACES, AND IN-LIEU SITES AND LAW ENFORCEMENT ACTIVITIES ON THE MAINSTREAM OF THE COLUMBIA RIVER

APRIL 19, 1988
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE
87-938 WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S411-2

## SELECT COMMITTEE ON INDIAN AFFAIRS

DANIEL K. INOUYE, Hawaii, *Chairman*
DANIEL J. EVANS, Washington, *Vice Chairman*

JOHN MELCHER, Montana
DENNIS DeCONCINI, Arizona
QUENTIN N. BURDICK, North Dakota
THOMAS A. DASCHLE, South Dakota

FRANK H. MURKOWSKI, Alaska
JOHN McCAIN, Arizona

ALAN R. PARKER, *Staff Director*
PATRICIA M. ZELL, *Chief Counsel*
JOE MENTOR, Jr., *Minority Counsel*

# CONTENTS

Page

Statements:

Baracker, Rob, Acting Deputy Assistant Secretary For Indian Affairs, Trust and Economic Development, U.S. Department of The Interior, Washington, DC ... 18
Bavin, Clark R., Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service, U.S. Department of The Interior, Washington, DC ... 22
Byrnes, James L., Deputy, Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC ... 21
Chapman, Mary Jim, elder, Snake River Polouse ... 52
Evans, Hon. Daniel J., U.S. Senator from Washington, vice chairman. Select Committee on Indian Affairs ... 2
Frank, Delbert, first vice chairman, tribal council, Confederated Tribes of the Warm Springs Reservation, Warm Springs, OR ... 4
George, Levi, Chairman, Fish, Wildlife, and Law and Order Committee, tribal council, Yakima Indian Nation, Toppenish, WA ... 6
Hicktem, Silichi, councilman, Mid-Columbia Tribe ... 55
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, chairman, Select Committee on Indian Affairs ... 1
Jackson, Johnny, Underwood, WA ... 45
Jim, Howard, chief, Mid-Columbia Tribe, Celilo Village, Celilo, OR ... 49
Lee, Jeanette, chairperson, Yakima Indian Nation ... 15
McCloud, Edith, Yelm, WA ... 49
Pallozzi, Morris M., Director, Office of Enforcement National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC ... 24
Pinkham, Allen, tribal council chairman, Nez Perce Indian Tribe, Lapwai, ID ... 3
Rees, Morgan, Deputy For Policy, Planning, and Legislative Affairs, Office of the Assistant Secretary of the Army for Civil Works, U.S. Department of Defense, Washington, DC ... 19
Wapato, S. Timothy, Director, Columbia River Inter-Tribal Fish Commission ... 9

## APPENDIX

Prepared statements:

Baracker, Rob ... 83
Bavin, Clark R ... 107
Billy, Louise ... 164
Brigham, N. Kathryn, Confederation Tribes of the Umatilla Indian Reservation ... 165
Byrnes, James L ... 98
Evans, Hon. Daniel J., U.S. Senator from Washington, vice chairman, Select Committee on Indian Affairs ... 57
Frank, Delbert (with attachments) ... 65
George, Levi (with attachments) ... 70
Goudy, Georgia ... 159
Jackson, Johnny (with attachments) ... 147
Jim, Howard (with attachments) ... 151
Jim, Sam, interpreter, Mid-Columbia River Chiefs Council ... 162
Jim, Warner, councilman, Mid-Columbia River Chiefs Council ... 163
Pallozzi, Morris M. (with attachments) ... 111
Pinkham, Allen ... 62
Rees, Morgan (with attachments) ... 88

Page
Prepared statements—Continued
Roberts, Helen C., coordinator, Indian education, WASCO, Education Service District, The Dalles, OR ..... 167
Sohappy, David Sr. ..... 139
Additional material submitted for the record:
Indian Fisheries on the Columbia River, David Alexis ..... 170
Various letters ..... 184

Note:

Briefing book on Indian in-lieu fishing sites and fisheries law enforcement. [Retained in committee files.]

# COLUMBIA RIVER INDIAN FISHERIES MANAGEMENT

---

TUESDAY, APRIL 19, 1988

U.S. Senate
Select Committee on Indian Affairs
*Washington, DC.*

The committee met, pursuant to notice, at 2:18 p.m., inroom 485, Russell Senate Office Building, Hon. Daniel K.Inouye (chairman of the committee) presiding.

Present: Senators Inouye and Evans.

Staff present: Alan Parker, staff director; Elva Arquero, chief clerk; Joe Mentor, minority counsel; and Patricia Zell, chief counsel.

## STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The Chairman. This afternoon we have this oversight hearing on the Columbia River Indian Fisheries Management. The objective of the hearing today is to determine the status of agreements and laws affecting the use of usual and accustomed fishing places, and in-lieu sites and law enforcement activities on the mainstream of the Columbia River.

In addition, the committee will consider application of the Lacey Act to Indian fishermen and the effect of the proposed settlement agreement in *United States* v. *Oregon* on future Lacey Act prosecutions.

I first learned of the issues which will be presented to us this afternoon early in my tenure as chairman of this select committee. During a trip to the Pacific Northwest I was made aware of the plight of Mr. David Sohappy, Sr., a Yakima Indian fisherman who was convicted in Federal court and sentenced to Federal prison for violation of the Federal Lacey Act. Mr. Sohappy has been the subject of much controversy, both in legal circles and in the popular press.

Along with a number of his fellow Yakima Indians, David Sohappy has been embroiled in a continuing battle with both the Federal and State governments over the exercise of treaty fishing rights along the Columbia River.

The name Sohappy has been associated with landmark litigation to clarify Indian treaty rights, and his plight has been the subject of editorial comment in almost every major daily newspaper in the Pacific Northwest.

David Sohappy, Sr., and the other Yakima fishermen who were convicted in Federal court are pawns in a struggle that should not have taken place. This is true, in large part, because of the cooperation of tribes and non-Indians in efforts to manage and enhance the fishery resource.

Truly there is a need for vigorous enforcement. We should focus our efforts, however, on greater cooperation between Federal, State, and tribal enforcement activities, and this cooperation should be initiated, rather than being forced upon, the Federal Government.

The witnesses this afternoon include representatives of the Nez Perce Tribe, the Warm Springs Tribes, and the Yakima Indian Nation, and Federal agencies entrusted by Congress with responsibility for managing Columbia River fish and wildlife resources. They also include representatives of the Indian people who live along the Columbia River and who depend on its fishery resources for their livelihood.

On behalf of the committee I welcome all of you, and we look forward to your testimony.

Before calling upon the witnesses, I would like to call upon my very distinguished vice-chairman, Senator Evans.

## STATEMENT OF DANIEL J. EVANS, U.S. SENATOR FROM WASHINGTON, VICE CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

Senator EVANS. Thank you, Mr. Chairman.

I would ask that my entire statement be placed in the record. I will refer only to a couple of very brief elements.

Today we will receive testimony about a controversy that goes back nearly 135 years. In 1855, the Nez Perce Tribe, the Umatilla Tribes, the Warm Springs Tribes, and the Yakima Indian Nation reserved fishing rights on the Columbia River and its tributaries in treaties signed with the Federal Government. In the treaties the Indians were guaranteed the right "to fish in common with" the non-Indian citizens of the territory.

In 1906, in *United States* v. *Winans* the United States Supreme Court ruled that the right encompassed guaranteed access to the Columbia River and its tributaries at all "usual and accustomed fishing places."

Following the construction of the Bonneville Dam in 1939, and the subsequent flooding of 37 "usual and accustomed" fishing sites on the mainstem of the Columbia River, the Secretary of War approved a settlement agreement in which the War Department agreed to acquire more than 400 acres to serve as in-lieu fishing sites.

This agreement represents a solemn commitment by the Federal Government to the Indian tribes along the river to compensate them for their fishing sites taken as a result of construction of the great mainstem hydroelectric dams. I believe it is far past time for us to honor this commitment. I will make every effort to achieve this end.

In the 50 years since the 1939 agreement was executed, only 40 acres of the agreed-upon 400 acres of in-lieu fishing sites have been acquired. Although the tribes continually have complained, their words have fallen on deaf ears. In fact, it has been difficult to resolve even the relatively minor issues of responsibility for operating and maintaining the fishing sites and determining where on the sites permanent residences can be located.

Let me just say, Mr. Chairman, I thoroughly agree with you in your initial statement regarding the Lacey Act. I believe strongly, as I believe you do, that the Indian tribes, and not the Federal Government, should bear primary responsibility for enforcing tribal laws. In this sense, I think the Lacey Act has been wrongly applied. Tragically, we have had Indian fishermen incarcerated, caught in a struggle between two sovereign governments—a struggle, I might add, that should never have taken place.

There is a need for vigorous enforcement. We should focus our efforts, however, on cooperation between Federal agencies and the tribes, and this cooperation should be initiated, and not forced upon, the Federal Government.

In the future, Federal and State law enforcement officials should work in close cooperation with tribal enforcement officials to assure an adequate response. And if we did so, I am confident we would not, again, have the tragic repetition of the *Sohappy* case, which, in my view, was largely caused by the absolute intransigence of Federal authorities in attempting to work with Indian tribes instead of against them.

Thank you, Mr. Chairman.

[Prepared statement of Senator Evans appears in appendix.]

The Chairman. Thank you very much, Senator. Without objection, your full statement will be made a part of the record.

Our first panel consists of: the Honorable Allen Pinkham, chairman of the Tribal Council of the Nez Perce Indian Tribe, Lapwai, ID; the Honorable Delbert Frank, the first vice chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Warm Springs, OR; and the Honorable Levi George, chairman of the Fish, Wildlife, and Law and Order Committee of the Tribal Council of the Yakima Indian Nation, Toppenish, WA.

Gentlemen, Welcome.

Mr. Pinkham, will you begin?

### STATEMENT OF HON. ALLEN PINKHAM, TRIBAL COUNCIL CHAIRMAN, NEZ PERCE INDIAN TRIBE, LAPWAI, ID

Mr. Pinkham. Thank you. I appreciate the time that I am given to provide some insight into what is occurring on the Columbia River.

I would like to request that the record remain open for a few days more so that more testimony could be provided from other interested parties and other tribal members that wish to make comments to the committee.

The Chairman. I am pleased to announce that the record will be kept open for 10 days.

Mr. Pinkham. And also I have a written statement I would like to submit. I believe you have it.

The Chairman. Your prepared statement will be inserted into the record immediately following your oral presentation.

Mr. PINKHAM. The Nez Perce Reservation is located in north central Idaho, and we also enjoy usual and accustomed sites in the State of Idaho, as well as Oregon and Washington, along the Columbia.

We have a requested in-lieu sites on the Columbia River before so that our people can exercise our treaty rights in the lower Columbia. I think this meets some of our long-term planning that would involve the fishery resource on the Columbia River.

I think more important is what is occurring right now in regards to the *David Sohappy* case, as well as other cases that have been dismissed and some that are still pending in the State of Idaho. The Lacey Act is grossly misapplied to my people in Northern Idaho.

We have a case that is pending—*United States* v. *Williams*—in regard to the exercise of treaty rights. The Federal prosecutor brought the case trying to apply Idaho, Washington, and Montana law upon my people.

We have a tribal court in place. If there is a problem out there in Indian country, why not have a cooperative agreement that says that these offenses will be prosecuted in tribal court? We do have ordinances that forbid sale of fish and game.

Unfortunately, there was a scam applied to my people in northern Idaho just a few months ago. There are something like 19 cases. The majority of those cases have been dismissed, but the Federal judge in Idaho is still hanging on to the *United States* v. *Williams* case. He amended his complaint to include tribal ordinances. It is my opinion that should be directly referred to tribal court in the prosecution. At this point it hasn't.

It is cases like this that bring about more problems than are resolved. The Federal Government and State agencies are spending thousands of dollars to prosecute a few Indians because they perceive that Indian tribes are unregulated. Of course, that is very mistaken.

We do have tribal courts. We are responsible. We are able to regulate ourselves, not only in the lower Columbia fishing, but also in our own reservation areas.

I feel that this committee could make some recommendations that would make the Lacey Act worded in such a way that tribal courts would have that first refusal option, rather than have the Federal Government or State agencies trying to apply tribal law, State law, or Federal law upon my people.

That would conclude my verbal remarks. If there are any questions I will certainly try to answer them.

Thank you.

[Prepared statement of Mr. Pinkham appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Chairman.

May I now call upon the first vice chairman of the Tribal Council of the Warm Springs Reservation, the Honorable Delbert Frank.

## STATEMENT OF HON. DELBERT FRANK, FIRST VICE CHAIRMAN, TRIBAL COUNCIL, CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION, WARM SPRINGS, OR

Mr. FRANK. Thank you.

Mr. Chairman and members of the committee, my name is Delbert Frank. I am the first vice chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon. Here with me is Nelson Wallulatum, chief of the Wasco people and also a tribal council member.

I am appearing today to express the support of the Warm Springs Tribal Council for the proposed development of additional in-lieu fishing sites for the treaty Indian fisherman of the mid-Columbia River.

Nelson and I grew up along the Columbia River. As young men, we fished at all of the traditional fishing places of our people, the middle-Oregon tribes, which now comprise part of the Warm Springs Confederacy. In our lifetimes, we have seen the Columbia River change from the great, free-flowing source of life for Indian people throughout the Pacific Northwest to its present condition, a string of reservoirs created to make electricity and encourage industrial development. Even with these changes, our Indian people still live along the river and still fish its waters.

When the first dam was built on the Columbia River in the 1930's, we were told that areas would be set aside along the shores of the reservoir behind Bonneville Dam to replace our traditional fishing and camping sites covered by the back waters of the dam. Originally, the Corps of Engineers was to set aside nearly 400 acres at a dozen or more locations behind Bonneville Dam for these in-lieu fishing and camping sites. However, when these in-lieu sites were finally established, only five sites, totaling less than 40 acres, were acquired.

When the Dalles Dam and John Day Dam were built in the 1950's and 1960's, no in-lieu sites were created to replace the traditional fishing areas lost under reservoirs behind those dams.

Additional in-lieu sites are badly needed throughout the Columbia River Indian Fishing area, particularly in the Bonneville pool.

Highways and large portions of private land along the Oregon and Washington shores cause our people difficulty in simply getting to the river to exercise their fishing rights. Additional in-lieu sites would provide needed access points, as well as areas for the Indian people to camp during the fishing seasons, erect drying shacks and smoking sheds, and build traditional fishing platforms.

A number of the locations suitable for additional in-lieu sites have recently been identified. The Warm Springs Tribal Council urges the Select Committee on Indian Affairs to direct the Army Corps of Engineers to acquire and develop these areas as in-lieu sites. These additional in-lieu sites will make it a little easier for the Indian people to exercise our treaty rights on the Columbia River, and it will help fulfill a promise made to the Indian people more than 50 years ago by the Federal Government when the Bonneville Dam was constructed. For these reasons, if none other, the additional in-lieu sites should be acquired and developed.

The Warm Springs Tribal Council also has been very concerned about the Federal Government's use in the recent years of the Lacey Act to enforce tribal law against tribal fishermen. The history of the "salmon" operation and Federal prosecution is well known. About one-half of the defendants in the Federal salmon trial, held before Judge Tanner in Los Angeles, were Warm

Springs tribal members. Three Warm Springs fishermen were sent to prison in 1986 as a result of those trials. Just last month Bruce Jim, the last of our fishermen still imprisoned, returned home.

The Warm Springs defendants in the *salmon* case were tried and convicted by the Federal Government of violating Warm Springs tribal law. These cases should have been heard in tribal court, not in Federal court. We tried, through our attorney, to have the cases transferred to tribal court before the Federal court trial took place in Los Angeles; however, that did not happen.

Our objection to the Lacey Act is that it undermines tribal sovereignty by substituting a Federal court's determination of what constitutes a violation of tribal law for the judgment of the tribe, itself. We object very strongly to that. We believe that it is if for the tribe to determine whether or not its law has been violated and, if it has, to punish the violator.

The Warm Springs Tribal Council believes strongly that the Federal Government's use of the Lacey Act to enforce tribal law against tribal members violates Congress' long- standing policy promoting tribal sovereignty and encouraging development of tribal governments. Anything this committee can do to change the administration's use of the Lacey Act to prosecute tribal members for violating tribal law would be applauded by the Warm Springs Tribal Council.

Thank you very much.

[Prepared statement of Mr. Frank appears in appendix.]

The **Chairman**. Thank you very much, Chairman Frank.

I will now call upon Chairman George.

## STATEMENT OF HON. LEVI GEORGE, CHAIRMAN, FISH, WILDLIFE, AND LAW AND ORDER COMMITTEE, TRIBAL COUNCIL, YAKIMA INDIAN NATION, TOPPENISH, WA

Mr. **George**. Thank you, Mr. Chairman and committee.

Good afternoon. Thank you for the opportunity to testify on these most important issues. My name is Levi George. I am an elected official of the Tribal Council of the Yakima Indian Nation and chairman of the Fish and Wildlife and Law and Order Committee. I have with me today Jeanette Lee, the chairman of the Yakima Tribal Council's Legislative Committee. I have submitted a written statement for the record, and will now summarize our position.

I have great interest, concern, and responsibility in the areas we are discussing today. First I would like to discuss the in-lieu site issue, then the Lacey Act.

I view in-lieu site issues as simply being fulfillment of the promises of the Corps of Engineers made to my people in 1938 to acquire 400 acres of land along the Columbia River to compensate, in part, for usual and accustomed fishing sites flooded by the construction of the Bonneville Dam.

Since time immemorial, the Yakima people have turned to the Columbia River for their foods, medicines, culture, and spiritual existence. Our life today is still tied to the river, even though our presently living elders hardly recognize the river they knew and worshipped only 50 years ago.

We were promised that the dams on the Columbia River would not damage our fishery. Yet, those dams almost destroyed that fishery.

We were also told that our fishing places that were inundated would be replaced by in-lieu sites where we could camp, launch our boats, fish, and prepare our catch.

We were told that we would that we would be given 400 acres of new sites to make up for those lost. Today, 50 years later, we only have 40 acres of those sites, and they are in serious need of repair. Acts of Congress in 1945 and 1955 authorized the Army Corps to acquire such lands, yet it has not happened.

We proposed such a language in the Columbia River Gorge Bill, but were told that it would be better to have Congress address this issue separately. We are now before you to urge that no further delays take place.

Our written statement contains specific recommendation on actions that are immediately needed to assure this commitment is adhered to.

We have recently gone up and down the river by land and in the water to identify sites that would give our fishermen good access to the river. Most of those lands are already owned by the Corps and would not even have to be purchased. It is likely that all is needed would be for the Appropriations Subcommittee to direct the Army Corps to meet with the leadership of the Yakima Nation and with our fishermen to designate appropriate sites.

The Corps fiscal year 1989 budget should include the funds that would be necessary to develop these sites with running water, parking, drying sheds, and other necessities. Funds should also be included for operation and maintenance of existing and future sites.

My second concern is the serious erosion of the tribal sovereignty and jurisdiction, and individual harm done to Indian people by the manner in which the Lacey Act Amendments, passed by the Congress in late 1981, have been interpreted and applied.

I am here representing not only the Yakima Indian Nation, but our members who have suffered as a result of the unjust application of this harsh law. It is very important to our sovereignty, in light of self-regulation, that the Lacey Act either be amended, or that separate legislation be enacted relative to the prosecution of the Indians in the exercise of rights properly governed by their tribal—not State or Federal—law.

Indian people were told that the inclusion of the Indian language in the Lacey Act Amendments was intended to help fill the jurisdictional void resulting from the Supreme Court's ruling in the *Oliphant* case. However, rather than solve that serious law enforcement problem, the Act was immediately turned against the very people it was supposedly intended to assist.

In fact, according to documents on file in the Federal prosecution of David Sohappy, National Marine Fisheries Agents, in the fall of 1981, were already conducting a "sting" operation against treaty Indians in anticipation of passage of the amendments. The tribal governments whose members were the subject of this "sting" and who had valid, operational law enforcement arms, were deliberately excluded by the Federal Government.

When efforts were made by the Yakima Nation to gain primary jurisdiction over prosecution of their tribal members under the Lacey Act, pursuant to our self-regulatory authority, the United States refused to recognize tribal regulatory primacy and continued its Federal prosecution. The results of those prosecutions, and the grossly disproportionate sentencing received by the defendants are well recorded in the correspondence between Senators Inouye and Evans and the Yakima Indian Nation. I would ask that these letters be made part of the record of this hearing.

[Letters appear in appendix.]

The Yakima Nation, from time immemorial, has regulated the fishery resource in the Columbia River. Our people have harvested the resource for their needs and have responsibly managed it for conservation purposes. It has only been since the coming of the white man and the overlay of progress, such as logging, agriculture, pollution, and dams, that our fishery runs can no longer meet our needs and require other protection.

In spite of the resource problem caused by others, the Yakima Indian Nation has continued to responsibly manage its fisheries and fishermen. This responsibility has been repeatedly recognized by the Federal Courts and has never been relinquished by the Yakima Nation.

In the recent *United States* v. *Oregon* salmon management plan, the States of Oregon and Washington consented to primacy of the tribal regulations and have agreed that prosecution in tribal court, regardless of the outcome, will be recognized with finality. This same logic should be acceptable to our trustee, the U.S. Government, and applicable in Federal Court.

The language of the management plan States that, "In no event shall cases referred to tribal court subsequently be prosecuted in State court unless there were no charges filed in tribal court." Accordingly, an amendment of the Lacey Act or a free-standing statute should be enacted to make this language statutory and applicable to the State and Federal Governments

We have enclosed proposed amendment language and have discussed free-standing legislation with your staff. This is not a unique concept in Federal law. The Federal Code, 18 U.S.C. 1152, already provides similar recognition with regard to prosecution under tribal laws in other areas.

Such an amendment will not only restore the sovereignty of the Yakima Indian Nation, but it will allow our people to continue to fish in the manner they have done for centuries. We reserved fishing and hunting rights to ourselves in our treaty of 1855.

I do have an additional point to make in my own way, on this Lacey Act. As I always stated, Chairman and committee, my people never drew State, county, and district lines. I lived that kind of life when I was young. My grandfather never recognized those lines.

Between Oregon and Washington my people lived and camped back and forth. There are certain things in Oregon that we don't have in Washington. We'd move to get those things in Oregon and transport it to the State of Washington because that is where we lived.

We would go deer hunting, elk hunting, gather medicine in Oregon, get certain kinds of roots, then we would move back to the

State of Washington and move on to other areas such as the Sawtooth Mountains. There is a certain kind of medicine up there that we get. It is the same way with people in Oregon—they travel back and forth, and I believe all the tribes feel the same way. Enforcement under the Lacey Act should take this into account.

Thank you.

[Prepared statement of Mr. George appears in appendix.]

The CHAIRMAN. In recognition of the extraordinary role that the vice chairman of this committee has played in speaking up for and defending the fishing treaty rights of native American Indians, and for the special role he played in the preparation of this report we have before us, a report that was prepared by the Columbia River Inter-Tribal Fish Commission, I would like to recognize Senator Evans to begin the questioning of the first panel.

Senator Evans.

Senator EVANS. Thank you, Mr. Chairman.

I appreciate the testimony of each of you, and I suspect my questions will ultimately be more pointed and more explicit when we get to some of the Federal representatives who will sit at the table.

Let me first congratulate those representing the Columbia River Inter-Tribal Fish Commission for an extraordinarily fine report—one which gives us the basis to act. I am particularly interested in the very interesting identification of sites which was listed in that report, and potential sites, particularly, and the fact that many of them, at least, appear to be already under Corps of Engineers ownership. Am I correct in that assumption?

Mr. PINKHAM. I believe that is correct.

Senator EVANS. The one thing that is not easily determined from the report is the total acreage of those potential in-lieu sites. Does anyone have a figure on approximately what that total acreage is of the number of sites that are listed in that report?

Mr. PINKHAM. I think one of the Inter-Tribal Fish Commission staff would have the figure, but we basically looked at the potential sites as just that, and we are making a broad recommendation that of these sites that we have identified in the report, any portions of these sites, either what is available, or if there is a particular site that may be available that maybe we could expand upon if it is not entirely there to meet our needs. But then we are reserving that option to fine-tune this proposal at a later date.

Senator EVANS. Well, is there anyone in the audience who represents staff from the Inter-Tribal Fish Commission who might have that information?

Mr. PINKHAM. Tim Wapato.

Senator EVANS. Tim, good to have you here again. Do you want to identify yourself for the record?

## STATEMENT OF S. TIMOTHY WAPATO, DIRECTOR, COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

Mr. WAPATO. Yes; Senator Evans and Mr. Chairman. The sites that have been identified—

Senator EVANS. Could you first, just for the record, identify yourself.

Mr. WAPATO. My name is S. Timothy Wapato. I am the Director of the Columbia River Inter-Tribal Fish Commission staff.

The sites identified in that report were sites that were identified by members of the four tribes floating the river by boat, and driving both banks of the river looking for possible sites that had both access to the river and to the roads, because it is very difficult to get to both in that particular area.

Of the sites that have been identified, it was very difficult to put an acreage figure on, because it was unknown exactly how large you might need a particular site to be, so they could go to any size.

There are now five sites in existence, and there are a total of 40 acres, so I guess you could take an average of about eight acres per site as about what you need. So when you look at those sites you can, as a rule of thumb, figure about eight acres per site for at least a place to start.

Senator EVANS. Well, I was struck by the—I presume that you did not have the opportunity to do a title search on each of these potential sites, but you have identified that at least some of them appear to be owned by the Corps of Engineers. Is that correct?

Mr. WAPATO. Yes; we did do a title search on approximately six of the sites, but we determined that the other sites also identified are all apparently in Corps ownership by Army Corps of Engineer records in Portland.

Senator EVANS. That's a fascinating finding, that if the Corps claims no jurisdiction, no ability, and no authority to acquire the rest of these sites, and has a significant acreage of land under its own control or ownership, that should simplify the problem rather substantially. We will find out when we hear from the Corps.

Mr. WAPATO. I think the normal procedure is that certain land is condemned when a dam is built, and that is how it comes into Corps ownership.

Senator EVANS. Levi, did you have additional comment?

Mr. GEORGE. Most of those sites that we picked had access to the road, to the river, over and under the railroad tracks.

Senator EVANS. So this inventory of sites listed in this report would be at least a pretty good place to start in looking for adequate kinds of sites, understanding that you do need road access and river access that is reasonable and easy, and probably I would guess it would be desirable to have sites scattered at different places along the pool.

Mr. GEORGE. The sites that we picked, Senator, are on both sides of the river, and have roads.

Senator EVANS. Yes.

Mr. PINKHAM. And it is to just cover a broad range of sites. We are not saying that this is the specific, but we would like to get the process started so that we can review these sites in more detailed manner and make a final proposal. But we want to make sure that they do meet the needs of all the tribes.

Senator EVANS. Let me turn to the Lacey Act for a moment and the management and enforcement of that act. Could any or all of you describe how you believe the relationship between Federal law enforcement agents and the tribal law enforcement agents should occur in trying to manage the Lacey Act and the tribal regulations that govern fishing, in this case on the Columbia River? What would you really like to see in that relationship?

Mr. Pinkham. I am Allen Pinkham, chairman of the Nez Perce Tribal Executive Committee. We've had dealings with Idaho Fish and Game, and also some Federal agencies in the State of Idaho—also in the State and down in lower Columbia. At times it has been contentious because of that perception that we are not doing our job, and we are not governing our people in a correct manner. But the case is there. We are saying we can regulate our people, and it should be done that way, because otherwise you are invading the autonomy of the tribe.

But I think it can certainly be done in a much better manner. If the Federal Government law enforcement people, or the State enforcement people would come to us and say, "There is an Indian out there breaking your tribal code. Why can't you take him to tribal court?" Well, we have done that in instances. We have accepted complaints from Idaho Fish and Game into the tribal court and prosecuted them on a certain basis. If the merit of the case warrants that we take it into tribal court, we will do so, and we will prosecute in tribal court.

But Idaho Fish and Game seems to want to apply our law to us in a very broad manner, and want to be guaranteed a conviction in our tribal court when they refer cases to us. Well, that is not the case in all instances. There needs to be a good basis for prosecution before we will proceed. And that is just prudent management of our tribal government, as well as our natural resources, that we should review all of these cases and not just prosecute indiscriminately.

But the basis for cooperative agreement is still there, and I think we can do it. But we can't have the Federal law enforcement or State law enforcement taking them Under the Lacey Act and try to apply the Lacey Act when it is a direct affront to the tribal sovereignty to do that.

Senator Evans. Do you have any estimate—each of the three tribes represented here—of the number of cases which have been brought under the Lacey Act in tribal court under tribal law—considering the Lacey Act in being how often, how frequently, how many times have cases been brought into tribal court for violation of tribal fishing laws?

Mr. Pinkham. In the case of Nez Perce there have been scams in northern Idaho, and they never even cooperated. They went ahead and prosecuted in Federal court.

Senator Evans. No; I am talking about how many the tribes, themselves, brought through the tribal police and tribal law enforcement into tribal court for violations of your own tribal regulations.

Mr. Pinkham. Yes; definitely. I can't recall the exact figures, but it would be around 30 cases that we have prosecuted in our tribal court on fish and wildlife violations.

Senator Evans. Levi.

Mr. George. We don't have numbers at the moment. We should have prepared ourselves for such a question and we will submit futher material for the record..

Senator **Evans**. It would be helpful if, for the record, you could later provide the figures.

[Information may be found in Mr. George's prepared statement which appears in appendix.]

Mr. **George**. But we do have law that patrols the Columbia River.

Senator **Evans**. The question is, if it is done frequently? Do you have a number of cases like that that are brought to your attention?

Mr. **George**. Yes.

Mr. **Frank**. I'd like to make a comment that in the old, traditional sovereign powers that our people had reserved when they reserved the management of fisheries on the Columbia River before the dams, under those conditions the laws that were made were by the traditional commission that was there. They ruled the river. There were laws for the river and these people.

At that time those violations, whether it was dispute of sites or violations of religious or traditional laws, were decided by this commission. They didn't go to a court at home on the Yakima Reservation or Washington Reservation. These people were the law. They were the lawmakers, and they took care of everything. That is the way it used to happen under the sovereign powers.

The river people were one river people at one time. There were no Oregonians or Washingtonians or Yakimas or Warm Springs. They were the people of the Columbia River Area, and they had their own law system.

We don't have that system now. We can't go pick up a Yakima man and arrest him and bring him to our tribal court. Neither can the Yakima do that to our boys. So there is a vacant spot in the area some place. That is probably one of the reasons why something had to happen.

I think we could solve the problem by the people, themselves, and I think it will come back, probably, to the traditional system that was used prior to the time of the reservation.

Senator **Evans**. Are your current tribal fishing regulations of the three tribes pretty consistent as it applies to a particular stretch of the river?

Mr. **Frank**. Yes; pretty much referred to an area in particular—or what we call the zone 6 area in our case.

Senator **Evans**. So if a tribal law enforcement officer of one tribe saw or observed, during a closed season of that tribe, an Indian fisherman fishing illegally, the chances are pretty good that he would be fishing illegally, regardless of which tribe he was representing, because of consistent open dates and timing of the fishing season?

Mr. **Frank**. Yes; I think, like I said, the rules and regulations were made, and they apply to every fisherman in the river, no matter who you are. I think that worked. I think the problem we are having is that the fishermen of the different tribes cannot be regulated by other tribes. Sometimes that has not happened. I think that is the problem. I think that is the area that we can solve by ourselves and go back to the traditional system.

Senator **Evans**. Under current circumstances, does the tribal police of one tribe notify the home tribe or the tribal law enforcement officers of the tribe represented by the fishermen?

Mr. **Frank**. I think that I would like to have Tim Wapato explain, because he is the creator of the law system in the country.

Senator **Evans**. OK.

Mr. **Wapato**. Thank you, Mr. Chairman. The four tribes, in about 1979, were attempting to have regulations that were standardized, at least for zone 6, the area between Bonneville and McNary Dams. To that end, there was an attempt to have an inter-tribal code formed that was adopted by all four tribes.

For various tribal sovereignty reasons, that inter-tribal code could not be adopted by all four tribes. So, in lieu of that, the four tribes now adopt virtually identical fishing regulations for the seasons, for closures, for openings. There is an inter-tribal enforcement section which is cross- deputized by all four tribes. Two officers are hired by each tribe specifically, but they are put into a pool which is then able and capable of enforcing the regulations of all four tribes.

So what occurs, then, is that if something that appears to be a violation occurs, the officers will contact the person or pull the net and see if it has identification, will make a report to the tribal prosecutor for that particular tribe wherever that person might be enrolled. The tribal prosecutor would then make a determination of whether prosecution should ensue, and then that tribal prosecutor will issue, through their court system, a summons for that particular person.

But there is cross-deputization in that regard to the four tribes.

In addition, three of the four tribes also have additional police officers that periodically and from time to time might be assigned to Columbia River patrol.

Senator **Evans**. Can you think of any circumstances where you think it would be appropriate for a Federal law enforcement officer engaged in patrolling the fishing regulations, when observing an apparent violator—an Indian violator—of tribal regulations, any circumstance when he should move directly against that person and bring them into Federal court rather than referring it to the tribal law enforcement officers and bringing it into tribal court?

Mr. **Wapato**. I can't think of a reason why these violations could not go to tribal court. I can see why an officer might have to move you immediately to stop some sort of activity, but the prosecution of it certainly—I see no reason why that should not go directly to tribal court.

Senator **Evans**. So, in other words, they might make the arrest at that point, but then refer the matter to tribal court for potential prosecution?

Mr. **Wapato**. That's correct.

Senator **Evans**. Levi, are you prepared, or is the Yakima Nation prepared to assert its own jurisdiction over all tribal members for alleged violations of fishing laws and regulations?

Mr. **George**. I was just telling Mr. Frank that it is pretty tough the way the system is today compared to the old days, as Mr. Frank mentioned. You know, in the old days you had only one regulation. When we had our feast at Celilo then that would open the season for all of the fishermen. It was not closed from then on. It just went on. The leader of that area would just say you could and could not go fishing.

Today it is kind of a complicated situation. We hate to adopt things against our own people, but it is there, and we have a tough time trying to get into that.

In talking about to what extent you should penalize a violator, in the old traditional system the ceremonial purpose was a priority, number one; the fisheries was second; and commercial or bordering preference was third in line. The priorities were such.

If the violator violated the religious or ceremonial purpose, that was a serious offense, and down the lines of fishing violation, and then maybe commercial.

Judgment was made based upon those violations. One was stronger than the other. And that is pretty much how the sentence was handed down by the traditional commission. And these commission members were what we call the traditional membership of what they call the communal band of the middle Columbia. They qualified, by their own law. So that was why it was respected in what they call sovereign powers and law of the land.

Senator EVANS. Now, when you say that was controlled by the middle band of Columbias, were they recognized or represented as a separate entity, even though they might have been part of one of the four tribes; or was that a collection of the several tribes? What really constituted membership as part of the middle band of the Columbia?

Mr. GEORGE. Pretty much to the treaty that was made with the United States, there was tribes, and of the tribes there were bands that had a voice in the treaty making.

Senator EVANS. So it was specific bands of the tribes or nations that were signatory of the treaty.

Mr. GEORGE. Right.

Senator EVANS. Would that mean that, for instance, some Yakimas would have different rights than others in terms of fishing on the Columbia? Some of each of the tribe would have different rights than others if they belonged to one band or another?

Mr. GEORGE. Well, you know, there are 14 bands for the Yakima Nation, and, knowing this, there were bands along the Columbia River. They were the ones that set up the rules and regulations which, after the treaty was made, and as you are aware, the tribes, then, were sent from the Columbia River. Some were sent to Warm Springs, some to Umatilla, and some to Yakima and other tribes, and it became the way it is today. So I believe that they combined regulations then.

Senator EVANS. But now as far as you are concerned, or as far as the tribal council is concerned, all enrolled members of the Yakima Nation have equal fishing rights on the Columbia?

Mr. GEORGE. Yes.

Senator EVANS. Do those who belong to this mid-Columbia bands of Indians assert that they have different or broader rights than the nation would allow?

Mr. GEORGE. Well, Senator, I believe we have three gentlemen that are representing, and I believe I would rather have them answer that.

Senator **Evans**. So they would be representative of that point of view? The ones on panel III? But as far as you are concerned, from the Yakima Nation's perspective, all members should have equal rights, and all should live under the same tribal regulations as it reflects on fishing in the Columbia?

Mr. **George**. Yes; I do.

Senator **Evans**. How about the other two tribes?

Mr. **Frank**. Again I go back. As the preparation of the negotiation of the treaty, my tribes of the Columbia River had their own council, and those tribes had their own respected places like, for instance, the Cascade Band, Old River Band, and the Dalles Band. They decided who their spokesman would be. It was agreed upon by all the mid-Columbia Indian people. It was the same way with the people upstream. They all decided and agreed upon how many spokesmen they were going to have. And that is how they came, and the treaty making was on that basis. That is how it was defined. And they reserved the sovereign power and rights that they could, by clear invitation to any other tribe—that is their reserved right.

Senator **Evans**. But then in today's world, though, as far as all of the Warm Springs are concerned, are they all subject to the to same fishing regulations, and do they all have the same rights on the Columbia River?

Mr. **Frank**. Yes, that's right. Yes.

Senator **Evans**. Is that also true with the Nez Perce?

Mr. **Pinkham**. That's also true with the Nez Perce. My understanding is that when the treaty was signed in 1855, it was signed by the tribal representatives at the time, and it was specifically a tribal right that was reserved for the exercise of members of that tribe.

Senator **Evans**. Thank you, Mr. Chairman. I may have other questions for the record, but I really appreciate the testimony and the work that the Columbia River Inter-Tribal Fish Commission has done in preparing this information for us. I suspect it will be pretty useful as we deal with the two problems we have in front of us today.

Mr. **Wapato**. Mr. Chairman, for the record the Confederated Tribes of the Umatilla Indian Reservation have prepared testimony. They were sending a person, Katherine Brigham, who became ill yesterday and couldn't make the trip, but they will be submitting tribal testimony also.

The **Chairman**. The record will be kept open for 10 days to receive that testimony.

The Chair has been advised that the chairperson of the Legislative Committee of the Yakima Nation, Ms. Jeanette Lee, wishes to make a statement.

Ms. Lee.

## STATEMENT OF JEANETTE LEE, CHAIRPERSON, YAKIMA INDIAN NATION

Ms. **Lee**. Thank you, Mr. Chairman. For the record, my name is Jeanette Lee, member of the tribal council, chairman of the Legislative Committee.

We appreciate this opportunity to testify before you. It has been long awaited. I feel that our people have suffered long enough, and we are hoping that the misapplication, the misinterpretation of the Lacey Act will be corrected by these hearings. I thank you so much for this time that we have spent here before you.

Thank you.

The CHAIRMAN. I thank you very much, Ms. Lee.

Just so the record will be complete, Mr. David Sohappy, Sr., Mr. David Sohappy, Jr., and three others were convicted by the Federal Court in 1983, is that correct? They were sentenced in 1986. In September 1986 they began to serve their time in prison.

I believe it was in April 1987, the Sohappys appeared before the tribal court of the Yakima Nation. Is that correct?

Mr. GEORGE. Yes; that is correct.

The CHAIRMAN. What was the finding of the tribal court at that time?

Mr. GEORGE. Not guilty, due to the entrapment.

The CHAIRMAN. They were found not guilty based upon the defense of entrapment?

Mr. GEORGE. Yes.

The CHAIRMAN. Was this matter communicated to the Justice Department?

Mr. GEORGE. Yes.

The CHAIRMAN. Did you receive any response from the Justice Department?

Mr. GEORGE. Yes; we had a few days lapse, and then we had to turn them over. I don't think anybody was happy about it.

The CHAIRMAN. They were in your custody, and you had to turn them over?

Mr. GEORGE. Yes.

The CHAIRMAN. Was the demand made by the Justice Department?

Mr. GEORGE. Yes.

The CHAIRMAN. In what form was the demand?

Ms. LEE. Yes, Mr. Chairman; there was a letter from the Department of Justice that they had presented to the tribal council. Also, when Mr. Mel Sampson, chairman of the tribal council, came back, he was working with the Justice Department, and at the time that they were brought to tribal court he spoke with the people in charge saying that regardless of the outcome, that we would, because of the wording in our treaty, release them and when the Federal Government asked for their return.

The CHAIRMAN. What if you did not release them?

Ms. LEE. I am sorry. I did not hear the question.

The CHAIRMAN. What would have happened if you did not release them?

Mr. GEORGE. Mr. Keefe could come up here and answer that, probably.

Maybe I will ask Mr. Waters.

Mr. WATERS. The consent at the time, Senator, in answering that question—my name is George Waters, by the way—is that the tribe would have been in violation of its treaty. There is a provision in the treaty which stipulates that the tribe cannot harbor a Federal fugitive, and at the point in time these people had been prosecuted the agreement with the Justice Department was that they would be turned over to the tribe. But the only way they would turn them over to the tribe for prosecution was if the tribe agreed at the time, pursuant to the language in the treaty, that if at a latter point, if requested by the Justice Department, they would be turned back again.

I think that the problem is that it was sort of after the fact. The horse was out of the barn.

What should have happened was that the prosecution initially should have been in tribal court. For the tribe to have to come in at a latter point in time after Federal prosecution had taken place put the tribe in an untenable situation.

The tribe asked, originally, for prosecution when the salmon scam first happened, and the Federal Government refused to turn the evidence and the primary prosecution over to the tribe. That is the essence, I think, of what the tribe is really wanting. We have got to have the authority.

The tribe needs the ability to assure that—Senator Evans asked the question earlier of what the Federal relationship could be with the tribe. You have got situations where tribal police are cross-deputized, BIA people are Federally commissioned, yet there could be a Federal undercover sting operation, and those same Federally-commissioned officers wouldn't even be told about it. It is kept from them. Whereas, if there was a good cooperative enforcement when someone learns about the potential of a crime, the tribe should be immediately notified and allowed to go forward and pursue a prosecution and not have to wait three years later until the Federal Government is done dealing with them.

The CHAIRMAN. So the treaty provides that the Yakima Nation may not harbor a person convicted in a Federal court. You did abide with that provision?

Ms. LEE. Yes; we did.

Senator EVANS. Mr. Chairman, I wonder if I could just interrupt. Isn't it also true that during that trial in the tribal court that Federal agents who would have had prime information that would have been utilized in the prosecution refused to appear and testify; is that correct?

Ms. LEE. Yes; they did refuse to come to the tribal court and testify.

Senator EVANS. Did that have a substantial impact on the validity of the prosecution's case?

Ms. LEE. Yes.

The CHAIRMAN. Was the request made of the Justice Department and the State of Washington authorities?

Ms. LEE. Our prosecutor did make that request, and they refused to come.

Mr. WATERS. The tribe, in pursuing a tribal prosecution, asked for the people who had been involved in this so-called "salmon scam" originally to come and appear in tribal court, and they did not come. So, clearly, there was a major piece of evidence in the form of warm bodies who had been involved that were not there to assist the tribe in its prosecution.

The CHAIRMAN. So under the provisions of the law as implemented, the Indian nation is required to follow the provisions of the treaty, but the Federal Government is not required to respond to any request on your part?

Mr. **WATERS.** I'm not sure what you mean.

The **CHAIRMAN.** You had made several requests. Are those requests covered by any provisions of the treaty?

Mr. **WATERS.** I don't think there is language in the treaty that would specifically address that type of a situation that I am familiar with.

Clearly the trust relationship that exists between the Federal Government and Indian tribes, and the fact that we have cooperative law enforcement would lead one to think that the Federal Government would have cooperated with the tribe at the beginning.

As this has unfolded over the last few years, and as alluded to earlier in the U.S. and Oregon Management Plan, that language has now been agreed to by the States. The States have concurred that they will defer to tribal court the prosecution of Indians in violation of tribal law, regardless of the outcome. We still have not gotten the Justice Department to say that they will agree to the same things that the States would agree to, even though the Justice Department is, ostensibly, the trustee.

The **CHAIRMAN.** Like my vice chairman, most of my questions are reserved for the next panel.

In behalf of the committee, I thank you all for appearing with us.

Mr. **GEORGE.** Mr. Chairman, I just want to get on record on this portion of the court hearing at San Francisco. I did try to testify on behalf of Sohappy, but Judge Tanner wouldn't allow me to try to explain the total thing on that, and he just hit the gavel and told me to go away. I had to spend my time out in the hall waiting for my turn to testify, and Tanner was pretty—I don't know the term on it, but I'm not going to. I think he was pretty mean to all of us at that time. Thank you.

The **CHAIRMAN.** Thank you very much.

Our next panel consists of: the Acting Deputy Assistant Secretary for Indian Affairs, Mr. Rob Baracker; the Deputy for Policy, Planning, and Legislative Affairs, Office of the Assistant Secretary of the Army for Civil Works, Mr. Morgan Rees; the Deputy Assistant Attorney General, Land and Natural Resources Division, Mr. James L. Byrnes; Chief of the Division of Law Enforcement, U.S. Fish and Wildlife Service, Mr. Clark Bavin; and the Director of the Office of Enforcement, National Marine Fisheries Service, Mr. Morris Pallozzi.

Mr. Baracker.

## STATEMENT OF ROB BARACKER, ACTING DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, TRUST AND ECONOMIC DEVELOPMENT, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. **BARACKER.** Mr. Chairman, Mr. Vice Chairman, honorable tribal leaders, a statement has been submitted to the committee, and I would like to suggest that it be made a part of the record.

The **CHAIRMAN.** Your prepared statement will be inserted immediately following your oral presentation.

Mr. **Baracker**. I would like to summarize some of the points out of that statement, but before I do, I would like to take this opportunity to identify, for the record, Mr. Les McConnell of our Portland Area Office.

I am pleased to have this opportunity to discuss the continuing concerns of the Confederated Tribes of the Warm Springs and Umatilla Reservations in Oregon, the Confederated Tribes and Bands of the Yakima Reservation in Washington, and the Nez Perce Tribe of Idaho regarding the Columbia River Treaty fishing issue relating to the acquisition and use of Federal lands in lieu of former usual and accustomed fishing stations which were inundated by construction of the Bonneville Dam in 1938.

Survey and construction activities for the Bonneville Dam began in 1933. Because fishing for salmon was the single most important livelihood pursued by these Indian people, both Indians and individuals expressed their desire to have ancient and accustomed fishing stations replaced since such areas would be flooded after the dam was completed. Interior has, and continues to support, attainment of these stations.

Negotiations between the Army Corps of Engineers and the affected Indian tribes for setting aside lands for replacement of in-lieu fishing sites concluded in an agreement in 1939. The agreement provided for the purchase or acquisition of six sites totaling approximately 400 acres in lieu of ancient and accustomed fishing stations and improvements thereon.

This agreement was approved by the Corps in 1940, and subsequently funded by the Congress through subsequent Act in 1945 and 1955. To date, of the originally agreed upon area, the Department has received a total of 41.5 acres for sites in lieu of these ancient and accustomed fishing stations.

The Bureau of Indian Affairs has been aware of all these events that have occurred since 1933 regarding these in-lieu sites. We will be happy to discuss, in the context of this panel, any questions you may have.

Thank you.

[Prepared statement of Mr. Baracker appears in appendix.]

The **Chairman**. May I now call on Mr. Rees?

## STATEMENT OF MORGAN REES, DEPUTY FOR POLICY, PLANNING, AND LEGISLATIVE AFFAIRS, OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS, U.S. DEPARTMENT OF DEFENSE, WASHINGTON, DC

Mr. **Rees**. Thank you, Mr. Chairman and Mr. Vice Chairman.

My name is Morgan Rees. I am the Deputy for Policy, Planning, and Legislative Affairs in the Office of the Assistant Secretary of the Army for Civil Works. Accompanying me today in the audience are Mr. Bernie Bishop, Chief of the Master Planning and Cultural Resources Section of the Corps of Engineers' Portland District, and Mr. Charles Flachbarth, attorney from the Office of the Chief Counsel of the Corps here in Washington.

Assistant Secretary Page was unable to attend today, and he sends his regards. He has a keen interest in discussing what we believe is a very important issue.

We are here to discuss the status of the law, pertinent agreements, and actions taken with respect to the provisions of Federal lands along the shoreline of the Columbia River for the use of the Yakima, Umatilla, Warm Springs, and Nez Perce tribes as in-lieu fishing sites in compensation for historically used sites which were inundated by reservoirs constructed by the Federal Government.

I would like to summarize my statement which has been submitted for the record.

Addressing the first issue, the Secretary of the Army and the Corps of Engineers have no authority with respect to enforcement of Lacey Act provisions or the settlement in the *U.S.* v. *Oregon* case. I will defer to the other Federal agencies to address those issues.

The major points of my statement are these: in the 1850's the Indians ceded title of certain lands in the Columbia River Basin to the United States, but reserved for themselves the right to fish the banks of the lower Columbia River at their usual and accustomed fishing sites.

The Bonneville Dam was constructed in the mid-1930's and caused inundation of 37 of those sites. In compensation, the Federal Government was to provide six in-lieu sites totaling about 400 acres. Eventually, five sites totaling about 40 acres, were provided.

A sixth site was purchased comprising 225 acres, but construction of the Dalles Dam in the late 1950's caused inundation of that site.

Decisions to construct the Dalles Dam resulted in a compensation payment to the tribes of $26 million. Based on the payment of the $26 million, and considering full expenditure of all appropriated funds authorized by the River and Harbor Act of 1945 to implement the 1939 agreement, the Corps understands its obligations for providing compensation to the tribes for the Bonneville and the Dalles Dams have been satisfied.

I do not have information at this time regarding compensation arrangements for the John Day Dam, but I will provide that for the record.

In the late 1960's and early 1970's, the Corps raised the pool at Bonneville to increase power generation, which, in turn, inundated more tribal fishing areas, and affected migration of salmon.

The Umatilla Tribes sued, based on interference with treaty fishing rights. A settlement agreement was reached in 1972 which called for the Corps to seek legislative authority to acquire additional in-lieu sites. Legislation to acquire additional sites was proposed in 1974, but it was never enacted.

Recently the Corps has become aware of the need for increased fishing access and facilities for the tribes. The Bureau of Indian Affairs has identified to the Corps several sites, and we, in the Assistant Secretary's Office, and in the Corps, support efforts to evaluate the feasibility of those sites, and to identify additional sites which may provide equitable resolution to the issues at hand.

From a purely technical/legal perspective, we believe the Corps has met its legal obligations to provide in-lieu sites. However, we recognize a continuing responsibility regarding the 1972 settlement agreement.

The Corps will complete, this year, a regional re-evaluation of its master plan for the operation of the dams on the lower Columbia River. We expect that study and subsequent detailed studies to lead to determinations of what existing Federal land may be suitable for additional in-lieu sites, or what additional non-Federal land may need to be acquired.

These determinations, in turn, would lead to a proposal for administrative action using existing Federal lands, or a legislative proposal to acquire additional non-Federal lands to address the equities involved.

This concludes my remarks, and I would be pleased to address questions you may have.

[Prepared statement of Mr. Rees appears in appendix.]

The **CHAIRMAN**. Thank you very much, Mr. Rees.

Mr. Byrnes.

## STATEMENT OF JAMES L. BYRNES, DEPUTY ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. **BYRNES**. Thank you, Mr. Chairman, for inviting the Department of Justice to appear here today to address the Columbia River Management Plan and the enforcement of fishery regulations on the Columbia River.

I am James L. Byrnes, Deputy Assistant Attorney General for the Land and Natural Resources Division. The division oversaw the negotiation and the development of the Columbia River Management plan on behalf of the Federal agencies that are signatory to the plan.

The plan is the result of an historic 4-year effort by four Indian tribes, the States of Oregon and Washington, and the United States to reach agreement on a plan to restore fish runs and establish management and enforcement procedures in the Columbia River Basin. On March 11, 1988, the parties submitted the plan to the Federal district court for approval.

The plan provides a framework within which the tribes and States may exercise their regulatory powers in a coordinated and systematic manner to manage and enhance Columbia River fisheries. The two primary goals of the plan are: one, to ensure that the harvest of available fish in the river is shared fairly and equally between treaty Indian and non-Indian fisheries; and that the fishery resources are protected and enhanced through natural and artificial propagation.

The United States and Oregon and the State of Washington have agreed in the plan that they will negotiate with each tribe for agreements to refer to the tribes for prosecution under tribal law those tribal fishermen cited by State or Federal enforcement officers for violating agreed-upon mainstem fishing regulations.

Except as provided in any such future agreement, the United States, Oregon, and Washington regain authority to prosecute violations of applicable laws or regulations in respective State or Federal courts.

Oregon and Washington have further agreed in the plan that they will not prosecute any case which they have referred to tribal authorities unless there are no charges filed in tribal court.

Federal enforcement of fishing regulations on the Columbia River takes place principally under the auspices of the Lacey Act.

First enacted in 1900, and most recently amended in 1981, the Act makes it a Federal offense to engage in commercial activity with any fish or wildlife taken or possessed in violation of an underlying Federal or tribal law, or with fish or wildlife taken, possessed, transported or sold in violation of any underlying State law.

The Department of Justice looks forward to working with all resource managers and enforcement agencies that manage resources on the Columbia River. Together, we have a common responsibility to protect those resources for the use of present and future generations.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Byrnes appears in appendix.]

The CHAIRMAN. Thank you, Mr. Byrnes.

Next we will hear from Mr. Bavin.

## STATEMENT OF CLARK R. BAVIN, CHIEF, DIVISION OF LAW ENFORCEMENT, U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. BAVIN. Thank you, Mr. Chairman, for inviting the U.S. Fish and Wildlife Service to appear before you today to testify concerning our policies on enforcement of the Lacey Act based on violation of an Indian tribal law, which was made a predicate offense by the 1981 Amendments.

I am Clark Bavin, Chief of the Division of Law Enforcement for the U.S. Fish and Wildlife Service, and as such am principal advisor to the director on all matters relating to enforcement of laws under the jurisdiction of the service.

The Lacey Act was first enacted in 1900 and has been amended several times. The U.S. Fish and Wildlife Service and its predecessor agencies have had enforcement responsibilities under this law for the past 88 years. During that time, we have had considerable experience with the issue of multiple jurisdictions.

It is a long established principle of law that the Fifth Amendment to the U.S. Constitution, which prohibits a person from being put in jeopardy twice for the same act, applies only to one sovereign. It is not considered double jeopardy to be prosecuted in more than one jurisdiction for the same act which may be a crime under the laws of each separate sovereign.

Notwithstanding this legal precedent, the service has long had a policy under the doctrine of fairness to refer matters for consideration of both Federal and State prosecutors only in special circumstances. Our policy prohibits field offices from directly referring a matter to both Federal and State prosecutors without prior clearance from the Washington Office.

Approval might be granted, for example, in situations where cases have been prosecuted in State court and we feel that there has been a gross miscarriage of justice, or for some other reason the Federal interest has not been sufficiently protected. Of course, the ultimate decision of whether prosecution will take place in the Federal system rests with the U.S. Attorney and the Department of Justice.

Now, in relation to Indians we have a similar situation. It is somewhat different in that the Department of the Interior has an interest in protecting and fostering the religious and cultural activities and interests of Indian peoples, and, at the same time, to conserve and protect wildlife resources.

In addition, the law relating to Indian hunting and fishing rights is very complicated. So for many years, even prior to the 1981 Amendments to the Lacey Act, we have had a policy that prohibits our field offices from directly referring any violation of Federal law to State or Federal prosecutors where they have reason to believe that an American Indian is the subject of the investigation.

In such situations the case must be referred to the Service's law enforcement headquarters office. We then consult with the Office of the Solicitor, which must review the facts and make a determination that no apparent Constitutional principles or departmental policy would be breached if the case were referred to either State or Federal prosecutors.

Now, if a tribal court assumes jurisdiction, a fair trial is held on the merits, and appropriate penalties assessed, we probably would not also seek prosecution under the Lacey Act in Federal Court. The only time in which such a case would be referred to the United States Attorney for prosecution would be where we believe the Federal interest has not been protected.

When Lacey Act charges are filed against Indians, most, if not all, involve illegal commercialization of fish or wildlife illegally taken under tribal or State law. Where both tribal and State law prohibit the sale of fish, a trial of the Indian in tribal court may be unable to address the seriousness of the offense. Furthermore, if penalties assessed against Indians are small compared to non-Indians involved in the same violations, the Federal interests in deterring further violations, protecting the resource, and safeguarding State and tribal rights may not be served.

Each case must be reviewed on the merits, and it is infeasible to make general statements on which jurisdiction would best serve justice and protect the resource.

I would also like to point out that there have been a number of forfeiture actions under the Lacey Act where non-Indians have violated tribal laws. This is specifically designed to assist the tribes' protection of their resources.

I believe, Mr. Chairman, that this statement answers the principal questions on which you requested our views. I will be happy to answer any questions.

[Prepared statement of Mr. Bavin appears in appendix.]

The CHAIRMAN. Thank you.

Would you proceed, Mr. Pallozzi?

Mr. PALLOZZI. Yes.

## STATEMENT OF MORRIS M. PALLOZZI, DIRECTOR, OFFICE OF ENFORCEMENT, NATIONAL MARINE FISHERIES SERVICE, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, DC, ACCOMPANIED BY MARGARET FRAILEY, ASSISTANT GENERAL COUNSEL FOR ENFORCEMENT AND LITIGATION, NOAA

Mr. PALLOZZI. Mr. Chairman, with your approval I will summarize my statement and submit the complete text for the record.

My name is Morris Pallozzi, and I am Director of the Office of Enforcement for the National Marine Fisheries Service. In this position I am responsible to the Assistant Administrator for Fisheries for all NMFS law enforcement matters. Accompanying me is Maggie Frailey, NOAA's Assistant General Counsel for Enforcement and Litigation. We appreciate this opportunity to appear today.

Since the National Marine Fisheries Service has no oversight responsibilities for in-lieu fishing sites, we have no comment to offer on that subject.

Since its creation in 1970, the National Marine Fisheries Service has carried out Federal law enforcement responsibilities relating to the commercial and recreational harvest of this country's fisheries resources by foreign and domestic fishermen.

NMFS has been one of the lead agencies in carrying out the responsibilities of the United States as determined by the Federal courts under a series of treaties negotiated with various Northwest Indian tribes in the 1850's. As those responsibilities relate to the Columbia River, we have diligently pursued the development of a cooperative, multi-jurisdictional fishery enforcement effort carried out through the Columbia River Law Enforcement Committee, those of the fisheries and game enforcement arms of the States of Washington, Oregon, and Idaho, U.S. Fish and Wildlife Service, the Columbia River Indian Tribes, and the National Marine Fisheries Service.

The mission and purpose of the committee is to facilitate the exchange of enforcement information, and to coordinate enforcement efforts on the Columbia, especially at times during which anadromous fish runs are most vulnerable to illegal fishing activity.

From the inception, a major goal of the committee has been to assist in establishing and maintaining a professional Columbia River inter-tribal fishery enforcement system, and enforcing a uniform code of laws through a tribal court system.

A primary component of that enforcement system is the enforcement training program for bureau and tribal officers established by the National Marine Fisheries Service, the Washington Department of Fisheries, and the Oregon State Police.

We will continue to support the Columbia River Inter-Tribal Enforcement System to achieve that level of cooperative enforcement effort which now exists in the coastal and Puget Sound areas of the State of Washington involving 20 Indian tribes, the Washington Department of Fisheries and the National Marine Fisheries Service, in coordination with the Northwest Indian Fisheries Commission.

Recently the United States, the States of Washington, and Oregon, and the four Columbia River Indian Tribes negotiated an agreement under the *U.S.* v. *Oregon* suit. This not yet final agreement is in the form of a Columbia River Management Plan.

The intent of the parties in the enforcement of tribal regulations section of the Columbia River Management Plan was to formalize the procedure of referring cases involving violations of tribal regulations by tribal fishermen to tribal court. We have long followed this procedure on an informal basis in the Puget Sound and coastal areas of Washington State.

In negotiating the Columbia River Management Plan, the United States was cognizant of the purpose of the 1981 amendments to the Lacey Act to support and strengthen tribal law protecting fish and wildlife. Accordingly, while the United States favors referral of most cases involving violation of tribal laws to tribal court, there are important reasons to retain Federal law enforcement and prosecutorial authority in the Lacey Act.

For example, the tribal courts are quite limited as to the magnitude of penalties imposed for serious resource violations.

The Lacey Act, applicable to all citizens, was specifically designed to deal with such violations, making them felonies prosecutable in Federal court. In addition, Indian tribes have jurisdiction only over their own members. Prosecution of non-member wildlife violations is appropriately handled under the Lacey Act.

I would like to conclude my statement by stating that the Lacey Act Amendments in 1981 have proven to be an effective tool which the Federal Government possesses to carry out its Congressionally-mandated responsibilities to protect this Nation's fisheries resources.

I would be happy to answer any questions you may have.

[Prepared statement of Mr. Pallozzi appears in appendix.]

Senator EVANS. Thank you all.

Let me start with the question of in-lieu sites, and then I will shift to questions on the Lacey Act.

First, Mr. Baracker, you mention in your testimony, as Mr. Rees does, as well, that in March 1974 the Corps submitted proposed legislation to the Congress seeking authority to purchase additional lands for in-lieu sites as the existing sites were deemed insufficient in area and inadequate to meet the needs of Indian fishermen.

Are you aware, from the BIA's perspective, whether subsequent to 1974 any further efforts were made by the Corps of Engineers, or by the BIA, or by anyone else to pursue legislation or authority or a way in which to fulfill the long-standing requirement that 400 acres be made available?

Mr. BARACKER. It is my understanding there is a very sufficient history of attempts through legislation to resolve this thing.

Senator EVANS. Well, legislative initiatives at what time and under what circumstances?

Mr. BARACKER. In 1978, 1981, and 1984.

Senator EVANS. What was the nature of those requests? Would you like to turn it over to Mr. McConnell?

Mr. MCCONNELL. My name is Les McConnell, and I am an employee of the Bureau of Indian Affairs from Portland, OR.

The legislative history ended in 1974 with the Secretary of the Army presenting to the Speaker of the House a proposal to increase the authority and increase funds.

Other attempts made by the Bureau of Indian Affairs have been within our administrative limits, and have not made it to the proposed legislation level. In our attempts we have cited in 1978 and again in 1981 and 1984 ended, with reviews that did not clear the necessary channels to become proposed legislation.

Administratively, we have worked most recently with the Corps of Engineers, starting in August 1987, to re-establish our efforts to get additional land. As the lands were purchased by the Corps of Engineers—the first five sites—they were transferred to the Department of Interior for management responsibilities.

As primary trustee, the Bureau of Indian Affairs has been seeking to fulfill or help fulfill that 1939 agreement leaving our balance of some 358 acres yet to be answered to.

Senator EVANS. You say in 1978, 1981, and 1984 these were internal reviews that did not make it to legislation. Where were they derailed, and for what purposes?

Mr. MCCONNELL. The history of the proposals, as they are written and forwarded here in Washington, DC, in our central office within the Bureau of Indian Affairs, they are sent around to executive branches of Government, and it is not clear to us where along the line they met a stalemate or died in the process.

There have been a few delays because other agenda items of national significance were made a priority. But I can't clearly answer your question as to where along the line we met with some opposition.

Senator EVANS. Is there any question in your mind that the agreement of 1939 is still valid?

Mr. MCCONNELL. No; not at all. It was never repealed.

Senator EVANS. So it is your understanding that there are still 358 or 359 acres owed?

Mr. MCCONNELL. That is correct.

Senator EVANS. If land could draw interest like money, you'd have a lot more acreage owed after 50 years.

Mr. MCCONNELL. Precisely. Yes.

Senator EVANS. Let me turn to Mr. Rees. Do you have any question about the validity of the agreement and the facts as they apparently have been set forth here today that there was an agreement of 400 acres of in-lieu sites, and about 41 have now been transferred, which leaves approximately 359 yet to go?

Mr. REES. There is no disagreement about the initial agreement of approximately 400 acres and the subsequent provision of about 40 acres.

The Corps of Engineers believes that the construction of the Dalles Dam and the $26 million provided in compensation at that time, in addition to the Corps having expended all of the appropriated funds under the 1944 Act, that the Corps authority to do more had been exhausted, and that additional compensation would require additional authority.

Senator EVANS. So after you had gotten the five sites, the tribes agreed to forego acquisition of the sixth site and use the balance to improve the other four in a temporary hiatus, I guess, in what was then going on.

You say in your testimony that in 1939 there were various disagreements that did not allow the procedure to be carried forth at that time. Do you know what those—I know that is a long time ago—but do you know what the disagreements were?

Mr. Rees. No; we do not, Senator. The only record we have that reflects that is the 1974 letter of Secretary Calloway when the legislation was submitted to the Congress in settlement of the 1972 agreement, and it referred to historic disagreements among the Indians, themselves, and within the Federal Government as to the appropriate course of action. But we don't have any further detail than that.

Senator Evans. Would it be a reasonable conjecture to believe that after 1939, when it wasn't easy to find 400 acres along the river, that one of the big disagreements was that there were non-Indians living on the land at the time and they didn't want to get off?

Mr. Rees. I would have to defer to our field folks. I'm not familiar with the area at that time.

Senator Evans. So, in 1974, you put in legislation under the Secretary of the Army, Howard Calloway, that did not pass, and then you say in your testimony, "Therefore, we continued to have no authority to acquire additional sites."

To what degree has the Corps of Engineers attempted, since 1974, to bring legislation to the Congress to give you that authority?

Mr. Rees. We have found no record of any subsequent attempts after 1974 to get that authority. And, as I believe I indicated in my testimony, we are receptive to that at this time. I went back and had the staff check the records of our legislative proposals, and there is no mention of that issue in there, and I don't have an explanation of why that is. But we are certainly receptive to that proposal.

Senator Evans. Would it be a reasonable thing to say that you are receptive to the proposal because of the hearing today?

Mr. Rees. We are receptive to the proposal because our office was unaware of this issue until we were notified of the hearing.

Senator Evans. I guess it just faded into the distance and other—

Mr. Rees. Apparently so.

Senator Evans [continuing]. Things had come forward. All right.

You say in your testimony on the bottom of page four that you are engaged now in a study identifying a number of locations for additional in-lieu fishing sites, and you are preparing a Columbia River regional overview of the Bonneville, the Dalles, and the John Day projects. Then you go on to say something that I find very interesting. You say, "These studies should indicate whether additional sites for tribal fishing are feasible, taking into consideration recreational and navigational use of the Columbia River system."

Are you saying that there is some question in your mind as to whether that agreement is subject to recreational and navigational priorities?

Mr. Rees. There are some project purposes involved in the dams along the river that we are required to hold through the authorization of those projects, and there are some areas within those projects that are designated for recreation and navigation use, so that any consideration of in-lieu sites must take into consideration the existing uses of those Federal projects in terms of the Congressional authorization for those uses.

That is not to say that that would provide an absolute obstacle to any solution to the need for in-lieu sites.

Senator **Evans**. Let me put it another very blunt way. If you got to the point where there simply were no other sites available—you could not acquire 400 acres as the 1939 agreement proposed except to take a portion of some recreational site that is already currently set aside for recreation, do you think that that would be appropriate?

Mr. **Rees**. It would certainly be possible.

Senator **Evans**. That wasn't my question. Would it be appropriate?

Mr. **Rees**. I will elaborate.

Senator **Evans**. All right. Fine.

Mr. **Rees**. In determining the appropriate use of authorized Federal projects, the Corps goes through a fairly elaborate public involvement and evaluation process. And based on the results of that process, if the appropriate use is for in-lieu sites rather than some existing project purpose, it is certainly possible to go forward with the in-lieu use. But in that instance the Corps would have to recommend to the Congress and have Congressional approval to modify the authorized purpose of the project.

Senator **Evans**. I understand that we're going to get into Congressional approval at some point in this process, if for no other reason than providing the money necessary to acquire those sites, or to change already designated Federal management of some sites to other purposes.

But I still want to get a little more pointed on this. If it comes right down to the point where there is a conflict, and you believe that recreational sites are in short supply, and that you haven't fulfilled the 400 acre agreement, and that you're down to a point where it cannot be done except by utilizing some share of a recreational site—just to use one example—do you believe the agreement would prevail? Would the requirement that you provide the 400 acres prevail in those circumstances? Or if you felt that recreation was more important, you could ignore the agreement?

Mr. **Rees**. The agreement prevails, but at the same time we cannot modify the project purposes without Congressional authorization. And in that instance, as I said earlier, we would have to come back to the Congress with a legislative proposal to do that.

Senator **Evans**. I understand that. But would you endorse having the Corps of Engineers recommend to the Administration that that be the course that would be taken under those circumstances?

Mr. **Rees**. We would certainly endorse that if that is the outcome of the evaluation and public involvement process. But I believe it is premature to speculate on what that process will be.

Senator **Evans**. Well, I certainly hope we never get to that. But I am not talking now about the end result of a public involvement process and all that sort of thing and kind of weighing which is best, it is really a fundamental question. Is an agreement an agreement? And if an agreement is an agreement and must be fulfilled, even after 50 years, and there is no other way to do it other than modifying a current alternative purpose for which land has been set aside, which has the higher priority?

Mr. **Rees**. Well, if it came to that, and we made that recommendation to the Congress, we would certainly be open to that course of action to make that recommendation if—

Senator **Evans**. I'm not talking about you being open to that. I'm talking about what you would recommend.

Mr. **Rees**. I am not sure what we could say with respect to what we would recommend until we have the facts before us. But in a theoretical sense, yes, we would be able to recommend that course of action, and we have no policy or philosophical opposition to recommending that course of action.

Senator **Evans**. Maybe I have to design a question that is a little more explicit, and I will submit it in writing, and we'll get an explicit answer in writing, then.

Mr. **Rees**. We'd be pleased to do that.

Senator **Evans**. It would probably be helpful to do it in that fashion.

I think I heard you say in your testimony that you felt that in a strict legal sense the Corps has met its legal obligation. How can that be true if we only have 41 acres out of 400 now under management?

Mr. **Rees**. Well, as I stated in the testimony, the construction of the Bonneville Dam and the Dalles Dam generated a process of compensation which involved the five sites and the expenditure of funds authorized in the 1945 act, in addition to which, at the time of construction of the Dalles Dam, $26 million was provided to the tribes in compensation for the effects of the activities on the river to that point in time.

So we believe that the 1939 agreement and the subsequent 1945 statute and the effects of the construction of the Dalles Dam have been satisfied.

As I mentioned in my oral remarks—and I don't believe that it is in my written testimony—I don't know at this point, and will provide for the record, the situation regarding the John Day Dam.

[Information to be supplied follows:]

The Corps did not provide compensation in money or in kind for any Indian fishing sites which may have been flooded above the John Day River by the John Day Dam. The Corps records do not indicate whether the Corps considered compensation for any specific fishing sites or whether the Indian tribes asserted any claims for specific fishing sites.

House Document 531 for the basin-wide development of Columbia River water resources was approved and authorized by the Congress in June 1950 Rivers and Harbors/Flood Control Act. It authorized construction of the Dalles and John Day Dams. In appendix Q of HD 531, ther is a discussion of Indian treaty rights. This dicussion identifies 14 "usual and accustomed fishing places" on the Columbia River and the Yakima River. None of the 14 sites are on the Columbia River between John Day Dam and McNary Dam.

The situation in the 1972 agreement with respect to raising the pool at Bonneville, the settlement agreement in that case explicitly recognized that the Corps of Engineers had no authority to guarantee that additional compensation would be provided, but the Corps agreed to seek the legislation to do that. The Corps sought the legislation to do that, and the legislation was not passed.

But we believe the specific legal terms of the agreements have been met. Notwithstanding all of that, we recognize that there was an absence of follow-up that there might very well have been, and we are certainly agreeable to doing that follow-up.

Senator EVANS. How explicitly did the $26 million settlement, for instance, in any way affect the agreement to provide 400 acres of in-lieu fishing sites?

Mr. REES. I'll provide that for the record. We had to get the records out of record storage, and weren't able to do that on time.

Senator EVANS. It would be helpful if you would, for the record, provide us with information on each of those subsequent agreements that you have mentioned, and where and how in those agreements you believe, in any legal way, it has expunged the requirement for the 400 acres in-lieu sites?

Mr. REES. We will be glad to do that.

[Information supplied in Mr. Rees' prepared statement which appears in appendix.]

Senator EVANS. Thank you.

Have you had an opportunity as yet to look at the study submitted by the Columbia River Tribes?

Mr. REES. No, sir; we have not received a copy, to the best of my knowledge.

Senator EVANS. Well, I would urge the Columbia River Inter-Tribal Fish Commission to make sure you get a copy at the earliest possible date, because I would like you to submit for the record your comment and any ideas you have on tab three in the report, which identifies 30 potential in-lieu sites, many of which, at least from the work that has been done by the Columbia River Inter-Tribal Fish Commission, appear to be currently in Corps ownership.

I wonder if, for the record, you could respond to those recommendations, and with particular emphasis on what you think the opportunities are for the Corps to transfer ownership of any or all of those pieces of land that now are held in fee ownership by the Corps.

Mr. REES. Yes; we will be glad to provide that for the record.

[Information supplied in Mr. Rees' prepared statement which appears in appendix.]

Senator EVANS. Do you believe that it would require further legislation? If you had a piece of land that you felt would be an appropriate piece of land for the fulfillment of this obligation, and it was now held in Corps ownership, could you transfer that administratively without further legislation?

Mr. REES. Yes; we can.

Senator EVANS. So we might be able to handle some, if not all, of this potential obligation through administrative rather than legislation?

Mr. REES. We would hope so. Yes.

Senator EVANS. Good.

Thank you very much.

Mr. Byrnes, let me shift now to the Lacey Act. I am struck by page 2 of your testimony where you say the two primary goals of the plan are to ensure that the harvest of available fish in the river is shared fairly and equally between treaty Indian and non-Indian fisheries, and that the fisheries resources are enhanced through natural and artificial propagation.

I have no problem with the second thesis, but are you sure that the first one is at least a complete statement of what our responsibilities are under the vote and subsequent decision?

It seems to me that not only is there the requirement to share equally, but to ensure that all the way along the line of catch, starting from the ocean and going clear in to the most up-river Indian or non-Indian fisherman, that there remain an opportunity to catch 50 percent.

Would your plan contemplate, for instance, that if a particular fish run—just for example—50 percent of the potential of that run had been caught by the time the fish entered the Columbia River, and all of that 50 percent had been caught by white fishermen, would your plan contemplate reserving the remaining 50 percent in the river all to Indian fishermen?

Mr. BYRNES. Absolutely, Senator. As a matter of fact, the situation that you described was one of the reasons the United States initiated the *United States* v. *Oregon* litigation in the first point. And I believe the management plan contemplates an equal share of the entire catch at each particular stage.

It sets up a relatively complicated system of technical advisory committees to make sure that there is communication as to how the run's harvest is being conducted.

Senator EVANS. Now, when you say "equal at each stage," I think you probably mean equal in the overall?

Mr. BYRNES. That's correct. To assure that the fish are not depleted at one stage, and that the people at the end of the pipeline are told "You can't fish because the 50 percent has been taken." That is correct, Senator.

Senator EVANS. All right.

On page 5 of your testimony you talk about U.S. Fish and Wildlife and National Marine Fisheries Service being charged with enforcing, and doing so they are authorized to utilize, by agreement, the personnel, services, and facilities of any other Federal or State agency or any Indian tribe. In certain instances these Federal law enforcement officers may also be cross-deputized to enforce State law as well. What is the recommendation or policy insofar as the Justice Department is concerned? Do you recommend that to the maximum extent possible Indian tribal officers be cross-deputized as U.S. officers?

Mr. BYRNES. The cross-deputation system is something we have utilized across the board in the Justice Department to enhance law enforcement efforts, and it has always been our position that it should be utilized to the maximum degree necessary. We have found it very valuable in cross deputizing agents of the Drug Enforcement Administration, as well as U.S. Marshals.

Senator EVANS. I may want to come back for a couple of questions, but let me turn to the other two gentlemen on the panel.

Mr. Bavin, you talk on page 1 about not considering it to be double jeopardy to be prosecuted in more than one jurisdiction for the same act which may be a crime under the laws of each separate sovereign. Then you go on in the second page to talk about the opportunities for that to happen where you are dealing with State courts versus Federal courts. How frequently is that sought?

Mr. **Bavin**. You mean where we seek prosecution in both State and Federal court?

Senator **Evans**. Well, after something has happened.

Mr. **Bavin**. Rarely.

Senator **Evans**. When a case is brought in State court that is under your concern or jurisdiction where a potential Federal charge also could be made, do you, in virtually every case, wait until the State court has acted before making any decision on following up on Federal prosecution?

Mr. **Bavin**. Not necessarily, Senator. It all depends on the circumstances. In some cases one goes first, or sometimes the other goes first. It just depends on the facts of each case.

Senator **Evans**. How frequently have you subsequently prosecuted cases when the State has already acted in whatever manner they've acted?

Mr. **Bavin**. Well, I would say not frequently, but we have done it. It is not a rare event to occur, but it doesn't happen in every situation, by any means.

Senator **Evans**. But I am narrowing it down now to fisheries cases either on the Columbia River or on the ocean—in other words, in the general Washington State and Oregon State area.

Mr. **Bavin**. I couldn't speak with any certainty on that, sir. As I say, I'm just relating our general policy of not seeking dual prosecution, and the same would apply in tribal court.

However, where the Federal interest has not been, in our opinion, properly protected, we would refer the matter to the Department of Justice, who would then decide whether or not a Federal prosecution would be appropriate.

Actually, we are not prosecutors. We are just investigators.

Senator **Evans**. I understand that. But you make the recommendation, certainly.

Mr. **Bavin**. We certainly refer the case to them and confer with them. Yes, sir.

Senator **Evans**. Could you supply for the record something—I don't want to get into a horrendous job for you, but something that would give us a clear idea of maybe what percentage of the time or how frequently, compared to the total number of cases, this occurs in the Oregon-Washington area on fishing cases.

Mr. **Bavin**. I will certainly try to, sir.

[Information to be supplied follows:]

The U.S. Fish and Wildlife Service has reviewed its cases for the past 3 years and has found that in no case has the Service sought Federal prosecution of native Americans in the Washington and Oregon area where prosecution had already been initiated in State court.

Senator **Evans**. Mr. Byrne, has the Justice Department referred cases to U.S. attorneys for Federal prosecution when charges for the same offense have already been brought in State court?

Mr. **Byrnes**. I am sure that has occurred, Senator.

Senator **Evans**. It has occurred. But how frequently does it occur?

Mr. **Byrnes**. Fairly frequently. Most of the cases brought to our attention involve an underlying breach of State or tribal law, and we often refer those to those appropriate courts. We view the Lacey

Act as a serious piece of legislation that involves serious penalties, and we believe it should be reserved for serious crimes.

Senator EVANS. I am not sure that I—either I didn't understand the answer, or the question wasn't clear. I'm talking about the times when action has already been brought in State courts where you then recommend or bring through the Justice Department—you refer the same case to the U.S. attorney either while a case is pending or after it has been concluded in State court.

Mr. BYRNES. We would utilize a case-by-case analysis that is recommended to our U.S. attorneys in the United States Attorney Manual and make a determination as to whether we felt the Federal interest had been vindicated.

If we felt it had been vindicated by the previous State prosecution, we would not recommend going forward. If we did not think that it had been, then we would proceed.

Senator EVANS. Would you judge that the statement made by Mr. Bavin in his presentation where it says, "Approval might be granted, for example, in situations where cases have been prosecuted in State court and we feel there has been a gross miscarriage of justice, or for some other reason the Federal interest has not been sufficiently protected."? Is that a reasonable description of the occasions under which you might take over?

Mr Byrnes. That is analogous to what we would look at.

Senator EVANS. Does your handbook have some objective standards on which you would base the decision to send the case to a Federal prosecutor?

Mr. BYRNES. Well, I think prosecutorial discretion—this would already be in the hand of a Federal prosecutor, be it someone in the Land and Natural Resources Division or someone in the U.S. Attorney's Office. But I think prosecutorial discretion, by its nature, implies just that. It would be discretionary on the part of the prosecutor looking at the standards that Congress set forth in the law.

As you probably know, the Lacey Act sets forth a monetary value of $350 as being a distinction between a misdemeanor and a felony. While we find that helpful, that is normally not the guidepost I think we would look at in terms of a monetary guidepost, but we would look at it.

Senator EVANS. How often do we find these cases brought in Federal court without referring them to State or tribal court?

Mr. BYRNES. It would depend. We often refer cases without any further Federal process. I could not possibly give you a number of how many times that might occur.

Senator EVANS. Could you give me some idea of just how many cases we're talking about in the Oregon-Washington area that are prosecuted per year under the Lacey Act?

Mr. BYRNES. Under the Lacey Act in Federal court?

Senator EVANS. Well, or under the Lacey Act in any court.

Mr. BYRNES. I am told that we can't give you an answer right now, Senator.

Senator EVANS. I'm curious because—

Mr. BYRNES. Quite frankly, there are very few that the Land and Natural Resources Division has prosecuted. There are some out there that the U.S. Attorneys' Offices in the respective States of Oregon and Washington have prosecuted.

Again, it is normally decided up-front when the case is given to us whether we think it is appropriate for Federal or State prosecution.

Senator EVANS. I was asking because if I were to ask for some information on these array of cases, I didn't know whether I was asking you to sift through 20,000, 2,000, 200, or 20.

Mr. BYRNES. Well, we'd have to sift through several thousands of cases to find the Lacey Act violations.

Senator EVANS. Let me get back to this relationship between State courts and Federal courts. Here is a fishing violation. You have been apprehended by NMFS. The case is ready to prosecute. Do you always go into the State court first?

Mr. BYRNES. The analysis would be if we did not think the case warranted Federal prosecution we would refer it to a State agency.

Senator EVANS. Has there been a case yet that hasn't gone to State court first?

Mr. BYRNES. Oh, yes, sir.

Senator EVANS. How many?

Mr. BYRNES. Again, I couldn't—

Senator EVANS. More than one?

Mr. BYRNES. I'm sure we're talking about more than one, but I have no idea how many we are talking about.

Senator EVANS. That might be useful for the record to maybe not comb through every one, but to give me some idea of just what it is that distinguishes those cases that are brought first in Federal court without going through the State court system first. That is the common practice, is it not?

Mr. BYRNES. No; normally we decide whether we want to proceed with prosecution in the Federal jurisdiction. If we want to proceed, we would proceed. We might also refer it to the State, or the State might already be aware of it if their agents brought it to our attention.

But this is essentially an analysis as to whether the Federal Government will prosecute a case up front regardless of what the State will do. If it comes to our attention first and we don't feel that it warrants prosecution, and the State has had no involvement to that point, we would decline Federal prosecution.

Senator EVANS. But you wouldn't turn it over to the State for their interest in prosecuting?

Mr. BYRNES. If we thought there was a violation, we would let the States know that it was out there.

Senator EVANS. Let me use the same analysis—

Mr. BYRNES. Indeed, the agents may have cited them for the State violation because of the cross-deputation we spoke about earlier.

Senator EVANS. Well, I would like to find out, in whatever way is the clearest, where these cases go—where Federal agents are involved in the law enforcement action, whether it is common, out of the ordinary, very seldom, practically always, whatever it is—in terms of going to State court versus having direct Federal prosecution.

And then, similarly, what do you do when it comes to a Federal law enforcement agent who has apprehended an Indian fisherman violating tribal laws?

Mr. BYRNES. If we did not think the case warranted Federal prosecution we would refer it to tribal court.

Senator EVANS. Could you also, then, do that kind of examination to give me the percentages for the ratio in terms of how many times you turn it over to the Indian tribal courts for prosecution first, just as in comparison with how many times you might turn it over to the State prosecution first?

Do you ever turn it over to the Indians for prosecution first?

Mr. BYRNES. Well, Senator, maybe I could give you a "for instance." Someone earlier mentioned the case of *United States* v. *Sohappy*.

Senator EVANS. Yes.

Mr. BYRNES. In that case there were 95 subjects in the course of the investigation. Of that, I am told that 76 were referred to Indian tribal courts for prosecution; 19 of the 95 were ultimately indicted through Federal felony prosecution.

So, as you can see there, the vast majority were referred to the tribal courts.

Senator EVANS. That's what I'm trying to get at is where we do these things, and what makes the distinction or determination.

Mr. Bavin, you said that,

> When both tribal and State law prohibit the sale of fish, the trial of the Indian in tribal court may be unable to address the seriousness of the offense. Furthermore, if the penalties assessed against the Indians are small compared to non-Indians involved in the same violations, the Federal interest in deterring further violations protecting the resources and safeguarding State and tribal rights may not be served.

That is an interesting and, I think, maybe appropriate thing to say. Would you also say that if penalties assessed against the Indians are large compared to non-Indians involved in the same violations that safeguarding State and tribal rights may not be served?

Mr. BAVIN. Well, Senator, I don't know that I could say it quite that way. What we were talking about here was where we had two jurisdictions. The tribal court doesn't have jurisdiction over the non-Indian, and in many of the cases we are involved in, both Indians and non-Indians are involved. They are commercial cases. As I said in my testimony, we focus not on the actual poaching cases—the fishing in closed season—so much as we focus our limited number of officers on the commercial-type cases.

What I was pointing out was that in cases like that, in situations where the Indians might be tried in tribal court and receive a very minor penalty or no penalty at all, and the non-Indians are prosecuted in Federal court and receive a substantial penalty for their involvement in a very similar kind of activity.

The prosecutors at the Justice Department might consider, in that situation, prosecuting in Federal court. I'm not saying they do, but that's the situation where they might. That was the point I was trying to make.

Senator EVANS. Do you think we have any great consistency either in Federal courts or anywhere else in penalties assessed in this kind of fishing violation and circumstance?

Mr. **Byrnes**. Senator, I would say that there is not necessarily consistency in sentencing across the country in any classes of violation. That was one of the purposes behind the Congressional creation of the U.S. Sentencing Commission attempting to make sentences more uniform.

Senator **Evans**. Yes.

Mr. **Byrnes**. Senator, one thing you might want to remember is that tribal courts, of course, are courts of limited jurisdiction.

Senator **Evans**. I understand.

Mr. **Byrnes**. OK.

Senator **Evans**. Mr. Pallozzi, on page 3 "We will continue to support the Columbia River Inter-Tribal Enforcement System to achieve that level of cooperative enforcement effort which now exists in the coastal and Puget Sound areas of the State of Washington." Do you feel there was appropriate—well, in the first place, what do you mean by that? What is the level of cooperative enforcement effort which now exists in the coastal and Puget Sound areas?

Mr. **Pallozzi**. It is our opinion that the level of cooperation among the 20 Indian tribes in that area has been more successful than it has been with the four tribes. Now, we are still open and willing to work and do the best we can to achieve a level that would be satisfactory to all.

Senator **Evans**. Well, what do you mean by "cooperation" with the 20 tribes in Puget sound, what does that mean in terms of law enforcement?

Mr. **Pallozzi**. In terms of law enforcement we have been able to work with them to set up standards of enforcement, to help with their training. We would be happy to submit a complete statement for the record.

Senator **Evans**. What about cross-deputization?

Mr. **Pallozzi**. We are in favor of that, and we have done that.

Senator **Evans**. Is it pretty standard, or is it just in unusual circumstances?

Mr. **Pallozzi**. I think it is standard where we have qualified enforcement officers. We have done it with the States, and we would be willing to do it with the tribal officers.

Senator **Evans**. In the area of the coastal and Puget Sound area of cooperation, if you observed an Indian fisherman—if a Federal agent observes an Indian fisherman engaged in fishing that appears to be in violation of tribal law or regulation, do you arrest them, or do you notify the tribal law enforcement officer?

Mr. **Pallozzi**. We would arrest them and make the case, and then refer it to our attorneys for prosecution. In most cases, depending on the severity of the case, our practice in most cases would be to send it to the appropriate jurisdiction, be it State or tribal, for disposition.

Senator **Evans**. In the case of the so-called "famous salmon scam" on the Columbia River, the *Sohappy* case, why did the Federal Government not attempt to notify the Yakima Tribal Police that illegal fishing was going on?

Mr. **Pallozzi**. I didn't know that we did not notify them. I'll have to give you—I'd be happy to submit a total statement of that case for the record. I don't know that we did not notify them, or the exact time that they were brought into the case.

Senator EVANS. How long was the sting operation going on?

Mr. PALLOZZI. I believe the sting operation started in 1981 and went on for a period of approximately 3 years, I believe.

Senator EVANS. Approximately 3 years. And you don't know when—

Mr. PALLOZZI. I'm not exactly sure of the date. No, sir.

Senator EVANS. It went on for 3 years. You're not sure just when the tribal police were notified of this going one?

Mr. PALLOZZI. Actually it was two seasons, Senator, the fall of 1981 and the spring of 1982.

Senator EVANS. Yes.

Mr. PALLOZZI. The whole operation was not targeted just at Indian violators. It was the whole gamut of illegal fishing.

Senator EVANS. I would like to get for the record, then, when the sting operation, itself, started; when the arrests were made as a result of the sting operation; and when any of the tribal officials or police were notified of the illegal fishing that was going on; and when any State law enforcement officials or other officials were notified.

[Information supplied in Mr. Pallozzi's prepared statement which appears in appendix.]

Mr. PALLOZZI. The State people were involved right from the beginning.

Senator EVANS. So the State was involved—

Mr. PALLOZZI. They were a part of the team. Yes, sir.

Senator EVANS. But the Indians were not?

Mr. PALLOZZI. That is correct.

Senator EVANS. Why not?

Mr. PALLOZZI. Well, I'll have to find out why for you.

Senator EVANS. You don't know why?

Mr. PALLOZZI. I do not know why.

Senator EVANS. Don't you think that would have been a good idea?

Mr. PALLOZZI. I think if we had appropriate law enforcement officials in the tribal organization. Yes.

Senator EVANS. If another scam operation were to be started—in the first place, do you think that is a good method of law enforcement?

Mr. PALLOZZI. I think it is a very effective method given the limited resources that we have. Yes.

Senator EVANS. It may be effective. There is a difference between "effective" and "good." There are a lot of things you can do that are effective—execution is effective—but it may not be good. Is it a wise and appropriate method of law enforcement to engage in a sting or scam operation in your view?

Mr. PALLOZZI. In my view it is. Yes.

Senator EVANS. Mr. Byrnes, do you think so, too?

Mr. BYRNES. I think our inability to do that would greatly hamper a number of law enforcement activities, not only in the Fish and Wildlife area, but also in the drug area.

Senator **Evans**. Mr. Chairman, I don't think I have any more questions. There are some things for the record they are answering. We may have other questions for the record.

The **Chairman**. Thank you very much.

Gentlemen, according to the court record on the *Sohappy* case, Mr. Sohappy, Sr., was convicted on the violation of unlawfully selling 4,402 pounds of different types of salmon. I don't know much about salmon, but there are steelheads, big ones, and small ones. And then Mr. Sohappy, Jr., was convicted of selling 313 pounds of Salmon. Are these numbers correct?

Mr. **Byrnes**. Senator, the record I have indicates that David Sohappy, Sr., and David Sohappy, Jr., had a total salmon sale of just about 33,000 pounds, and about another 3,000 pounds of steelhead, and that they received in payment from the sting operation in excess of $35,000 in exchange for that amount of salmon.

The entire sting operation netted approximately 53 tons of fish during that closed season.

The **Chairman**. Well, they were convicted for the selling of 4,402 pounds, weren't they?

Mr. **Byrnes** I have close to 33,000 pounds.

The **Chairman**. Well—

Mr. **Byrnes**. Now, Senator, David Sohappy, Sr., was convicted on four Lacey Act felony violations. Oftentimes, when a defendant is charged with multiple counts he may only be found guilty of one particular one. However, when the judge determines a sentence, he is allowed to consider the entire course of action. So oftentimes you will see a person who is convicted of only one count on a several-count indictment, but, in fact, the judge may consider other courses of action in his discretionary handing out of the sentence.

The **Chairman**. When were the amendments to the Lacey Act signed by the President?

Mr. **Byrnes**. It is my understanding it was some time in 1981. It was either late 1981 or early 1982. November 16, 1981. So I assume it was signed some time—that's when it was approved, so I assume it was signed some time shortly after that.

The **Chairman**. November 16, 1981? And yet the sting operation began on April 13, 1981, 7 months before the President signed that bill into law?

Mr. **Byrnes**. I think that is correct, Senator.

The **Chairman**. And, in fact, the prosecutor made the following statement in a press release, "The instant investigation was begun in anticipation of expected changes in the Lacey Act."

Mr. **Byrnes**. Senator, I was not—

The **Chairman**. Have you ever done this before? Have you begun an investigation before there is a law in the books?

Mr. **Byrnes**. Senator, I was not aware of any statement the prosecutor had made. I think I can speak for our client agencies in saying when they began this investigation they were looking into something that was illegal. If subsequently Congress extended the scope of a particular law that made that illegal conduct subject to different penalties, then we would, of course, be obliged to carry out Congress' will.

I think it is safe to say that when they began the sting operation they were not aware of who they were investigating. There were not even aware of what they were investigating. They were just aware that there was some illegal activity going on.

The CHAIRMAN. Well, this is what the prosecutor said: "The instant investigation was begun in anticipation of expected changes in the Lacey Act," and it continued, "If such changes had not occurred, the major violations would have been referred to the appropriate State officials for prosecution." This press release was issued on June 17, 1982.

Incidentally, this matter was being investigated at the request of the Washington State Department of Fisheries. If that is the case, why didn't the Washington State Department of Fisheries do the prosecuting?

Mr. BYRNES. I have no idea why the Washington State Attorney General would not have initiated prosecution. If it is possible they did not find appropriate evidence, or if they felt this was appropriate for Federal prosecution, the Washington State authorities may have alerted the Federal authorities.

The CHAIRMAN. I hope that you will check into that press release, because it says it was begun in anticipation. I hope that is not the practice of the Justice Department to begin investigation in anticipation of changes in the law.

Mr. BYRNES. We normally do not direct the FBI or the DEA—the two criminal investigative agencies under the Department of Justice's Jurisdiction—to do that.

I don't know that we directed these other agencies to conduct any sort of investigation. It sounds to me, from the further quote from that press release, that they were alerted by State authorities, and that's when they began the Federal investigation.

The CHAIRMAN. I must apologize for having stepped out during your testimony. It was a matter of grave urgency. But as I walked in, I believe in response to the questions of the vice-chairman, you said it is your policy to avoid dual jurisdiction—one of you said this. And if the Federal interest is not adequately addressed, then you assume jurisdiction. I believe you said in case the Federal interest is not vindicated.

Keeping that in mind, on January 12, 1987, Mr. Roy Scott and Mr. Stephen Olgier were found guilty of violating the Washington State laws on fishery and conservation—the same laws that the Sohappys found themselves in trouble with. They sold tons of salmon to Seattle-area restaurants. This is a slight difference. In the case of Sohappys agents went out there to buy the salmon from Cook's Landing. In this case these two gentlemen, I presume in their trucks, went around to restaurants and sold the salmon.

The King County district court—I presume this is a State court—gave Mr. Scott 30 days in jail and Mr. Olgier 1 year suspended sentence and $1,000 fine.

Do you believe that the Federal interest was vindicated, keeping in mind the *Sohappy* case?

Mr. BYRNES. Senator, you haven't given me enough facts to determine whether there would be Federal jurisdiction in that particular case. I am unaware of it.

The CHAIRMAN. I would hope that you would look into this matter and advise this committee whether the Federal interest has been vindicated, and whether the Federal interest has been adequately—

Mr. **Byrnes**. It's possible that only a State law was violated. I didn't take from anything you said that there was any interstate transportation.

The **Chairman**. There was a case entitled *United States* v. *595,000 pounds of salmon*. Are you aware of this case?

Mr. **Byrnes**. Well, I am aware of a number of cases. I'm not quite sure of the poundage figures.

The **Chairman**. It involves the Union, Incorporated, of California, a company incorporated in the State of California, with operations in Tacoma, WA. They were prosecuted for violation of the Lacey Act in smuggling millions of pounds of salmon, although the case in this instance was just for 595,000 pounds.

What was the outcome of this case?

Mr. **Pallozzi**. Our Assistant General Counsel is here from NOAA, Ms. Frailey.

Ms. **Frailey**. My name is Margaret Frailey. I am the Assistant General Counsel for Enforcement and Litigation at NOAA.

The case you mentioned, along with some other cases, are going through the Federal courts right now as forfeiture actions against salmon. So far, no indictments have been returned in those cases against the company.

The **Chairman**. And in this case there is no indictment?

Ms. **Frailey**. Not as of now.

The **Chairman**. What do you intend to do?

Ms. **Frailey**. Well, that is up to the U.S. attorneys who are handling the cases. They are pending in several different districts.

The **Chairman**. And when was this matter brought?

Ms. **Frailey**. The forfeiture actions began in the fall of 1986, and that particular case is now pending in the ninth circuit in an interlocutory appeal on questions involving the Taiwanese law that is the underlying law in that case.

Senator **Evans**. Mr. Chairman, let me follow up on that?

The **Chairman**. Please.

Senator **Evans**. It is my understanding that the 600,000 pounds were 2 shipments of 17 similar shipments that had taken place. I find it incredible that—we're talking about millions of pounds of salmon. It makes David Sohappy look like a beggar. No criminal indictments 2 years later?

Mr. **Byrnes**. Senator, I think that this case points up how difficult it is to make a good case under the Lacey Act. This if merely a forfeiture action. The plaintiffs in this case are disputing that the Taiwanese law is a law at all, and it is on appeal to the ninth circuit.

Certainly, if they are successful on appeal and this Taiwanese law is declared not to be a law for purposes of the Lacey Act, then, certainly, we would not be successful in any criminal prosecution.

That having been said, I don't know what the other elements of that particular case are and, of course, I couldn't comment on anything that was pending investigation or indictment in the U.S. attorney's office.

Senator **Evans**. Presumably you wouldn't have brought the forfeiture action if you didn't think the Taiwanese law was law, would you?

Mr. **Byrnes**. Our position in the ninth circuit is that that is so, Senator.

Senator **Evans**. All right. Well, if the Taiwanese law is a law, is there criminal action potential there?

Mr. **Byrnes**. I would say yes, sir.

Senator **Evans**. That's what I can't understand. I don't think the Chairman can, either. Why in the world, if you make the assertion that the law is law for purposes of bringing a forfeiture action and there are millions of pounds of salmon involved, why in the world don't you take front action with a criminal case?

Mr. **Byrnes**. Senator, I don't think I have said there will not be a criminal indictment in that case.

Senator **Evans**. No; I'm saying why didn't you start with a criminal case?

Mr. **Byrnes**. Actually I don't know where the status of it is. Frankly, there are two different evidentiary standards. In a criminal conviction you require much higher evidentiary standards than you would in a forfeiture action.

The **Chairman**. What I can't understand is that 7 months before the 1981 Lacey Amendments were signed by the President, Federal authorities thought it was important enough and in anticipation of the adoption of such amendments began the sting operation. But yet, in this case involving millions of pounds, no action has yet been taken.

Mr. **Byrnes**. Senator, I don't know that was the case. And I don't think that we can determine that these agents were out investigating in anticipation. They were investigating to determine whether there were any illegal activities going on.

The **Chairman**. Do you give any weight to decisions of tribal courts?

Mr. **Byrnes**. Weight, Senator?

The **Chairman**. Yes.

Mr. **Byrnes**. Tribal courts are authorized to impose criminal penalties up to 6 months or a $500 fine. It was recently amended in 1986 to increase that penalty to 1 year in jail and a $5,000 fine. So, Senator, any court that can impose a penalty of that, I would give some weight.

The **Chairman**. Did the decision of the tribal court on the Sohappys have any influence upon the views of the Justice Department? Or did it make no difference?

Mr. **Byrnes**. Senator, you might recall that the tribal court did not initiate prosecution until after indictment, after trial, after sentencing, after affirmance of the Federal District Court's opinion by the ninth circuit court of appeals, and after denial of review of that ninth circuit decision by the U.S. Supreme Court.

By the time the tribal court initiated prosecution, it was well beyond any review at the Department of Justice.

I would point out, however, that in early March of this year we did make a motion to the district court to reduce Mr. Sohappy's imprisonment to time served, and that motion was denied by the district judge.

The CHAIRMAN. What is the present status of Mr. Sohappy's incarceration?

Mr. BYRNES. He remains in Federal custody, and it is my understanding that he will be released some time in early May by action of the Parole Commission's computation of time served.

The CHAIRMAN. What about his son?

Mr. BYRNES. He is in the same situation. I think the dates of release are relatively similar.

The CHAIRMAN. I believe there is another person who is presently incarcerated in some prison in Minnesota or Wisconsin.

Mr. BYRNES. Wilbur Slockish is incarcerated in the Federal prison in Sandstone, MN. His presumptive release date is June 3, 1989.

The CHAIRMAN. Why is it that he cannot be incarcerated in the same prison where Sohappy is spending his time, where his family can visit him?

Mr. BYRNES. There is certainly nothing that I know that prohibits him from being in the same Federal penitentiary, Senator. If he wishes to be moved, he can certainly make that request to the Bureau of Prison officials, and I am sure they will adjudicate it.

The CHAIRMAN. Well, I have been advised that applications have been made on several occasions, and they have been denied.

Mr. BYRNES. I was not aware of that, Senator.

The CHAIRMAN. Would you look into this matter, please?

Mr. BYRNES. I certainly would.

The CHAIRMAN. Is it a practice to send a fisherman like that to a far-off place for imprisonment when prisons nearby are available?

Mr. BYRNES. Senator, your statement concludes that the prisons nearby were available—

The CHAIRMAN. Assuming that they are available.

Mr. BYRNES. Assuming his profession as a fisherman is probably not much of an interest to the Bureau of Prisons officials. They try to incarcerate people for security reasons, and a number of other elements which do not necessarily relate to his situation.

The CHAIRMAN. Are the Sohappys considered security risks?

Mr. BYRNES. I see they are incarcerated—both David Sohappy, Sr., and David Sohappy, Jr.—at the Geiger Prison Camp in Spokane, WA. My knowledge of the Bureau of Prisons is that prisons camps are normally minimum security prisons. I'm not sure what level of prisoner threat they would be classified as, but the fact that they are at a prison camp indicates that that is a relatively minimum security penitentiary.

The CHAIRMAN. That being the case, I was just curious that on the day Mr. Sohappy was arrested, 13 carloads of agents raided the Cook's Landing camp. Did you need 13 carloads of agents?

Mr. BYRNES. Sir, I wouldn't presume to tell agents who are enforcing laws in that type of atmosphere how they should proceed. If it became a legal issue, I would be more than happy to give them an opinion on it.

The CHAIRMAN. I am just curious, that's all.

Mr. BYRNES. I don't know what they felt was the situation. As I indicated before, the investigation had 95 subjects, total. If they were arresting them all on 1 day then I could speculate that might be the case.

The CHAIRMAN. When these shiploads of salmon in the *United States* v. *595,000 pounds of salmon* were confiscated, did you have 13 carloads of agents raiding the ship, also?

Mr. BYRNES. Senator, unless they were Federal Bureau of Investigation agents or DEA agents they weren't Department of Justice agents. In any event, I don't know how many were involved in that.

The CHAIRMAN. Mr. Pallozzi.

Mr. PALLOZZI. Senator, I will look into the 13 carloads. In 13 carloads I am sure you could fit in the entire 96 agents of the National Marine Fisheries Service that we have totally available in the United States. We may have had 13 cars—

The CHAIRMAN. At least 13 agents, then.

Mr. PALLOZZI. Maybe 13 agents. I would say possibly two people per car. I would be happy to check. I know that the operation was well planned and put together in cooperation with State officials, and I would be happy to provide you with the total amount.

I don't believe—certainly if they were carloads, they weren't on the payroll.

The CHAIRMAN. Were the tribal council or the tribal chairman advised of the sting operation?

Mr. PALLOZZI. As I stated earlier, I'm not sure at what point in time they were advised.

The CHAIRMAN. Will you advise this committee as to when?

Mr. PALLOZZI. I will advise the committee as to when. Yes, sir.

[Information to be supplied follows:]

Thirteen cars were used in the execution of the search warrants at Cook's Landing. There were two officers in each car. This was not an unreasonable number to ensure the safety of all parties and to seize the nine vehicles and electronic equipment, and to search five buildings and two trailers.

The head of the Columbia River Inter-Tribal Fisheries Law Enforcement Group was briefed on the investigation on June 22, 1982. The four tribal councils were briefed shortly thereafter.

The CHAIRMAN. I do not suppose they were told when the arrest was being made?

Mr. PALLOZZI. I don't believe so. I believe that would have been—I doubt that anyone would have known except those arresting officers, and maybe the U.S. attorney involved.

The CHAIRMAN. I believe you said that this sting operation was a vast one that involved not just Indians, but non-Indians; is that correct? I heard that just as I walked in.

Mr. PALLOZZI. When the investigation was started to see what illegal activities were underway there was a feeling that there were illegal activities, and this was started to see what illegal activities were occurring, and not, as the prosecutor stated, in anticipation of any law. We were out there trying to do our job. We certainly don't have the resources to look for extra work to do in anticipation of the law.

The CHAIRMAN. You began the investigation at the request of the State office, did you not?

Mr. PALLOZZI. We began the investigation at the request, and in cooperation with the State of Washington. Yes, sir.

The CHAIRMAN. As a result of this investigation, how many non-Indians were arrested? Was it about 10?

Mr. PALLOZZI. No; I think it was just one or two.

The CHAIRMAN. One or two?

Mr. PALLOZZI. I believe so, yes.

The CHAIRMAN. Would you let this committee know as to who the one or two were, and what the charges were, and whether they were found guilty and incarcerated?

Mr. BYRNES. Senator, I am aware of only one case. It was the manager of the Season Fish Company, who was apparently one of the purchasers. He was prosecuted and found guilty and received a prison term for 5 years from Judge Tanner, as well.

The CHAIRMAN. Who is this?

Mr. BYRNES. He was the manager of something called the Season Fish Company.

The CHAIRMAN. Where is the manager of the Season Fish Company now?

Mr. BYRNES. Pardon me?

The CHAIRMAN. Where is he now?

Mr. BYRNES. I'm not sure, Senator.

The CHAIRMAN. Still in prison?

Mr. BYRNES. I have no idea where he is now, Senator. I am just looking.

The CHAIRMAN. Would you let this committee know. I am just curious to see if he is still waiting for his release date.

The CHAIRMAN. Is this fellow still doing business?

Mr. BYRNES. Not if he is in the Federal penitentiary.

The CHAIRMAN. Oh, he is still in there?

Mr. BYRNES. I don't know, Senator, if he is or not. I will certainly check and let you know.

The CHAIRMAN. Well, I have many other questions, but if I may, like Senator Evans, I would like to submit them. These are technical, legal questions.

But if you would provide the committee responses of some of the questions we have already asked, I would appreciate that very much.

Senator EVANS. Mr. Chairman, I just have one other question that I neglected to ask. Following the raid at Cook's Landing, a press release was issued by the U.S. Department of Commerce stating that illegal Indian fishing was responsible for the disappearance of 40,000 1981 fall chinook above Bonneville Dam. Does NMFS still take the position that Indian Fishing was responsible for those missing 40,000 fish?

Mr. PALLOZZI. I'll have to check the numbers. I've got — it looks like 40,000 pounds.

Senator EVANS. You mean in the press release or in your—

Mr. PALLOZZI. I'll have to take a look at the press release and see. Maybe just the Sohappys alone we're talking about 43,000 or 44,000 pounds of fish.

Senator EVANS. No; this was 40,000 1981 fall chinook fish, not pounds.

Mr. PALLOZZI. I'll have to check that.

Senator EVANS. This was a press release of the Department of Commerce.

Presumably you wouldn't have the information, I guess, whether the NMFS takes the position that Indian fishing was responsible for these? Do you still take that position that they're responsible for the missing 40,000 fish?

Mr. PALLOZZI. I couldn't answer that, here, Senator. I would be happy to provide an answer for the record, though.

Senator EVANS. All right. I think it is important so that we get clear information as to what the real status is. It is my understanding that there subsequently was information gathered that pointed to several other causes, including some illegal toxic discharges into the Columbia River and other elements that were responsible for at least a portion of the missing fish, and not Indian fishing, at all.

Please get us the press release, and then the current position of NMFS as to what they really think did happen in terms of those missing fish.

Mr. PALLOZZI. Certainly.

[Information supplied in Mr. Pallozzi's prepared statement which appears in appendix.]

The CHAIRMAN. Gentlemen, I thank you very much.

Our final panel consists of: Mr. Johnny Jackson of Underwood, WA; Mr. Howard Jim of Celilo Village, Celilo, OR; and Ms. Edith McCloud of Yelm, WA. We have a request from Ms. Mary Jim Chapman of the Yakima Reservation to also participate in the last panel.

Ladies and gentlemen, the committee is most pleased to have you appear before us and to share your words and your wisdom with us.

I would like to call upon Mr. Johnny Jackson first.

Mr. JACKSON. Mr. Chairman, we also have an interpreter for Chief Howard Jim.

The CHAIRMAN. If this interpreter would come forward, please.

Mr. Jackson.

## STATEMENT OF JOHNNY JACKSON, UNDERWOOD, WA

Mr. JACKSON. Mr. Senator, my name is Johnny Jackson. I am one of the Columbia River chiefs of the Columbia River Tribes. I am happy that I could be here today to testify on behalf of my people, along with my fellow chief, Howard Jim.

We came here on grave important matters, which we believe are affecting us and our people along the river. However, I would also like to say Mr. Chairman that we regret that our brother, David Sohappy, could not join us here today. We ask that his statements be placed in the records alongside our statements.

The CHAIRMAN. Without objection, the statement of David Sohappy, Sr., dated April 19, 1988, will be made a part of the record at this point.

[Prepared statement of Mr. Sohappy appears in appendix.]

Mr. JACKSON. First, I want to say that I am a traditional chief of the Klickitat and Cascade Tribes along the Columbia River. I've lived along the river. I was born there, and I was raised there all my life. We've lived there since time immemorial. We also own land along the Columbia River. All our traditional values are along the Columbia River.

We are a traditional people, and we live under the traditional laws and the ways of the river life.

We value our life, and we value our ways. As Columbia River people, we are here today to see that somehow things could be made better for us.

We live along the river as our ancestors have since time immemorial. We have never moved to the reservation. The reservations are about 100 miles in all three directions north, south, and east from where we live along the Columbia.

We have never moved to the reservations because one of our chiefs who had gone to the treaty grounds at Walla Walla, Chief Slockish, reserved that right for us that we remain along the river and along this land and water that we value. Our cemeteries and our food and our medicine and all our roots, berries, and everything that we have—our medicines—are on both sides of the river.

We value this river very much, as the traditional leaders here—Howard and I—value our people very much. In time of trouble it hurts us very much to see that these things happen. That is how much our people mean to us. Although they are down to 600 or 700 to 1,000 of us left, we still remain on the land where some of us live along the river, and all the sites where I lived, and where there were villages. I have pictures of those villages—one of the villages where I lived, as well as pictures of Celilo where people have always lived along the river. They have never left it. They have never moved from there.

Even on the river, itself, there are islands which were cemeteries which we still remain to protect and watch over.

The berry fields which are now being more or less molested and abused.Our bean grass, in which we use to make baskets is being harvested by others and exported. We don't see the natural way that it was when we used to go up there, as I did when I was a child.

We fish every year. That is all we know. We never hardly go anywhere to work anywhere else. We live off the land. We live by our unwritten laws. And today those unwritten laws are being ignored, our tradition is being ignored.

Many of the things that we have that we live by in our longhouses and our homes are being more or less ignored. When we are fishing, we are the last to receive that fish. The ocean fishery, the Alaskan fishery, the lower river, all the trollers—they get the first fish. They get the prime fish. They get the best prices. And yet we are the ones that are conserving.

In our natural way, before the dams were made, we never were short of fish, because in our unwritten laws and our natural, traditional way, we know how to conserve, and we've always conserved. We have always had a conservative way, and the fish were always there, because when we were put on this continent as native people, the creator had given us these laws and given us this way of life to live by. And what he has given us, he had given us a way to thank him for it, for that is what our feasts are for.

The many things that we have that we do in the traditional ways, being pushed out where we are being asked to forget. But we will not forget it.

We have always valued the fish very highly. Every fish has a name to it. A few years ago we had a lot of problem with the steelhead. The non-Indian—the white man—does not know what the steelhead means to the Indian. They call him a trout because he is a sporty fish, he is a fighting fish, and he is used for trophies and to play with. But to an Indian he is the only fish that has a certain oil that no other fish has that the Indian always used since time immemorial to preserve his food for the year-round, and we have had problems over that fish.

On our land I lived in a river village. All the way down to Cascade Locks and Bonneville there were small villages and small tribes. In each village at Eagle Creek and Herman Creek and Cook's Landing, and down to Wind River, down the Cascades all the way down there were Indian people. We all lived the same way. The fish was our way of life, and all the medicines, the roots, and the berries in the mountains. Everything that we valued was there.

We travelled from our area clear down to the Willamette River to fish to the camus fields near Salem. Today there is nothing there. Those were all our area. Today we only have that little area where we live.

Today they say that the Corps of Engineers owns all that land after the Bonneville Dam went in, where one time we lived undisturbed, and we lived the way our ancestors always lived in a natural way of taking of food and doing our fishing and living.

We are here because I am being evicted from one of those sites. The Cook's area, where Sohappy lived, all that 160 acres, which once belonged to my grandfather, which was supposed to have been leased—we don't know what happened to that lease after he died—today they say that the Government owns it, Cascade Locks and Bonneville.

Below Bonneville that was still our fishery. We never got anything for that. The dam went up and we never got anything out of it.

These are the things that we see that we feel that we've never, ever gotten anything for it. Yet, we are hanging on to what we have in the best way we know how as traditional people.

We never get to know anything that's going on because we are down on the river. We are the last to find out on a lot of things. There are a lot of laws being made, a lot of rules and regulations being passed, and we are the last to find out about it. That is why we have these men in prison today because of the Lacey Act. We didn't know anything about the Lacey Act until those guys were going to court and until they were getting thrown in jail. All of the sudden we knew that there was a sting operation. The same tactics were being used that I was trained to use in Korea. I couldn't understand what was happening to us.

I feel that there was a great injustice being made against my people and what has happened to Howard's people.

I feel that David Sohappy is paying the price for something that many people have done, all the way down to Long View, WA and Raymond, WA. None of those people were cited. Yet, I hear a man today talking about the investigations that they made in that 14 months. The man that he mentioned is sitting in prison was also buying fish down there illegally, but the blame was put on to the tribal fishery up in our area.

None of those young people or any of them in that area— I don't hear any of them stamped with Lacey Act convictions or anything in that area. But our people are paying the price.

I feel that I would like to ask this question: as chiefs who have always held our traditional way of life along the river, and our councils, who are not being recognized, and our chieftainship, which is not being recognized, and that Corps of Engineers and the Government claiming that they got the land, what chief ever gave that up or signed it away? I don't believe that my grandfather Slockish signed anything away, nor did Chief Tommy Thompson, nor any other chief.

I believe that from World War II that many of the lands were taken from us because of that and were never returned to us, as well as in-lieu sites.

For instance, these gentlemen sitting next to me were moved twice during the war. That is how they ended up at Celilo, yet they cannot go back to the land that they own.

This in-lieu site that I lived on with my grandparents—from a child I knew that we've always lived there. That's when the river was real low before the dam was flooding it. I used to watch my people hook fish, and there were fish all over. We never had to have anybody come in there and tell us how much fish we could get or when to get them and when not to get them. They got what they wanted, and the rest were still going through. They just filled up their drying sheds, and that's all. They never bothered the fish.

It was the same way with Celilo. We knew how to conserve. That was part of our unwritten laws we still go by. Our unwritten laws today are being unnoticed, unheard. It is all the State and Federal Government laws that are being put in front of us.

I feel that it is time that there should be a change or changes where we should know, as individuals, that we still have a right, and that we can be recognized and known as the Indian people along the Columbia River. We still have lands. We still have our cemeteries, our sacred grounds, our food, and our water, and all that's there which belongs to us. We should be recognized and have that without constantly being harassed by State and Federal officials, and being watched over more than any other individual.

We watch other individuals do the same things that we are being prosecuted for and being arrested for, and they are not ever being apprehended for it. It goes unnoticed, but we are noticed every time we do it.

We cannot go out on a boat without an authority looking at us. But others run around every day. Wind surfers are taking over. Wind surfers are wondering when we will be moved out so they can move in. These are the things that we look at, and what is happening to our people.

Yet we don't feel that we are being compensated. We've never given up anything that is there that belongs to us. We've never moved to the reservation. We don't have any desired to go to any of the reservations. We are river people, and all we feel is that we want to remain there, and what is there is ours.

We hope that we can always be there.

If there are any questions, I will answer them. I will let the others speak, and that is all I will say for now.

[Prepared statement of Mr. Jackson appears in appendix.]

The CHAIRMAN. Thank you very much, Chief Jackson.

I will now call upon Chief Howard Jim.

## STATEMENT OF HOWARD JIM, CELILO VILLAGE, CELILO, OR

Mr. Jim [remarks given in native tongue, and interpreted.] My name is Howard Jim. I am Chief of the mid-Columbia Tribe residing at Celilo. I have been a councilman for many years. I have been involved with my people along the river. I am still living there, and I was appointed as a chief of the mid-Columbia Tribe.

The years that I have been appointed to be the speaker for my people I have asked and pleaded for help from other agencies, and to no avail. And today I am standing with that same problem, and I am here asking for this help. I have a lot to say.

From the time beginning, no one knows how long ago it was, but as long as it has been in existence the fishing was always regulated by the chief, not by any other agency.

I am very concerned about what I have spoken about, that chiefs at one time had the say-so on the river, and today my question is: why, from the Portland office of the Fish Commission, are they regulating our river and telling us when to fish and when not to fish?

As we are traditional people along the river, we have always been traditional people. We value the things that we live by on the river, and the things that we have on the river, and it is very sacred to our life. We feel that our tradition has been jeopardized by someone else planning for us, and we are afraid that the creator is going to punish us for these wrong doings.

As far as I can recollect, I believe that everything that we value in all our traditional ways has never been jeopardized by our own people.

I have come today to present my feelings to you because, in the States of Oregon and Washington we are not recognized as Indian people living along the river.

He does not have that much to say today. If there are going to be any questions toward Howard Jim, he will do his best to answer it.

[Prepared statement of Mr. Jim appears in appendix.]

The CHAIRMAN. Thank you very much, Chief Jim.

Now may I call upon the spiritual leader, Edith McCloud?

## STATEMENT OF EDITH McCLOUD, YELM, WA

Ms. MCCLOUD. Senator, I am not a spiritual leader. I don't have that title.

I would like to say that I really appreciate your hearing us today, and I am glad to see two friendly faces sitting up there on the panel, Senator Evans and Senator Inouye. I have known Senator Evans for a long time. We have had a lot of communication with fishing in the northwest when he was Governor.

My real name is Tiloots kaine I am a Walulapum. My ancestors came from the mouth of Walla Walla River and lived on the Columbia River. They were forced to move on the reservation by the soldiers—what we called the soldiers at that time.

My great-granduncle refused to move, and so did my grandmothers and grandfathers, and they had to move them out by force. And they moved us to the Umatilla Indian Reservation, where I was born and raised.

We were not as lucky as some people to be able to stay on the river, and no one has told you that our fisheries that we have today are just a certain part of Columbia River that is called zone six. I don't know how many miles it is, but we are all grouped in there—all the four tribes—and we all fish on both sides of the river.

I would like to talk to you about my son. He was one of the people that was incarcerated for the salmon scam. It was an entrapment. The National Marine Fisheries and the State of Washington, together, planned this entrapment of our people.

It took them many months where they picked up a lot of people, and they didn't mention the one white woman that they picked up that really did violate the Lacey Act. She was amongst the Indian people. She was married to an Indian. I believe today that's the reason why there are Indian women who were not incarcerated, because she was put on probation, so they had to let the other women on probation, too.

My son did not violate the Lacey Act. He didn't violate anything. I like the message Senator Evans gave us that an agreement is an agreement, and when our people agreed to the treaty of 1885, I really don't think they agreed to the treaties that were signed in 1855 because I don't see any way that they could understand what they were agreeing to, but I call that an agreement.

Our rights were reserved—our aboriginal rights were reserved for our people. They were reserved, and that was an agreement. And now, on top of all of these things, we have other organizations, we have the Inter-Tribal, we have the Oregon and Washington State Compact, we have so many organizations that are policing us and our fishing, and when I say "policing," I mean that.

Shortly after the men were picked up—we were ceremonial fishing, as we are doing today—we had five different law enforcements down there encircling my two sons. They were trying to intimidate them into a fight. They all had guns. I happened to come along, and some of the enforcement people moved back.

There was a BIA policeman. The National Marine Fisheries patrolman was the most aggressive and forceful. We had the Inter-Tribal Police that were taking direction from the National Marine Fisheries. We had the Oregon State Patrol, and we had the Washington State Fisheries.

They made my sons count those fish over and over and over again. We also had the Coast Guard out in the river watching them while they were pulling fish out of the ceremonial nets and counting them out. They'd make them repeatedly count the fish. That is harassment. That is real harassment. It is scary.

We fish from the John Day River. We put our boat in the water there. That is a big Government park called LePage. Before that park was ever made we landed our boats there, which was nothing but a big gravel pile. Today they make us move around. If we camp too long in one place we have to move. I always thought that our treaties reserved the right for us to go anywhere where we were doing our ceremonial things or our natural things.

These people already spoke on our spiritual and natural laws that I believe in. We all have those laws. We try to abide by them. It is very hard.

One thing that no one has said is that all of these tribes that we talk about, all of these tribes that are represented, are all the same kind of people. I have relatives in every one of the reservations. We are all the same people.

Today we are competing with each other over grant money, over everything. I guess that is the way it was planned. I know there were plans made for us 20 years ahead of our time, by the U.S. Government but that isn't the way we work. We should respect each other. We should believe in each other.

I come here with no title. I am a mother and a grandmother. My son's family had a very difficult time because of the salmon scam arrests. His family was evicted from their home shortly after he got arrested. They had to move around here and there wherever anybody had enough room for them. And he agreed to a court hearing where there would be no testimony, and he was supposed to get a probation, but that was another lie. He did eight months in Geiger at Spokane, and it took a lawyer to get him into Geiger. They wanted to send him to Lom Poc California, and it took a lawyer to get him out on probation for 2½ more months at a halfway house, or whatever they call them. We do have some friends.

It is interesting for me to hear the testimony of the Inter-Tribal people. You people that sit here in Washington, DC, really do believe that they are our official spokesman. In our tribe, we never did have a referendum vote to vote in the Inter-Tribal. It was just agreed upon by maybe one or two people. And now that is our law and order. They tell us when to fish, when to get out of the river.

Recently we had a winter season, and they agreed amongst themselves that we should pull out a week ahead, even if the State said that there was no reason for conservation. So on top of everything else, we have our own people pushing laws down our throats, too.

And when you talk about tribal officials coming back here and agreeing to things, that is only them speaking for the whole tribe without most of the tribe knowing what they are agreeing to. I know that for a fact. I heard there was a meeting yesterday on the Hanford Site for something. We heard about it today. We hear about things after they have already happened.

Everyone has already spoken about the inconsistency of the Lacey Act. I didn't even know what the Lacey Act was when my son was picked up. We all got copies, and we read it, and then we couldn't even understand it.

I understand there were only two Indian people who were back here to sign for the amendment on the Lacey Act—the Indian part of it. They were from the Yakama Tribe.

I hope in the future, you will listen to these gentlemen on my left here, they are the true leaders of our people—of most of our people. We try to hang on to our old ways.

My grandfather was the last chief of the Walla Wallas, and he used to come back here to do business. He even learned how to drink liquor when he was back here.

I am very happy to have this opportunity to tell you people how us grass roots people have to live. I have many grandchildren, many children. Those are the people that I am worried about, and generations to come.

If we keep on pressing all of these new laws onto ourselves by some of our officials, we are not going to have anything left pretty soon.

We hated to go on to the reservation in the beginning, but today that is our only recluse.

I could go on and on and on and cry up here, but I won't take any more time.

I thank you for listening to me.

The CHAIRMAN. I thank you very much, Ms. McCloud.

Now we shall hear from Ms. Chapman.

## STATEMENT OF MARY JIM CHAPMAN

Ms. CHAPMAN. [Remarks given in native tongue.]

Ms. CARRIE PARKER. [Interpreted after remarks completed.] This is Mary Jim. Mary Jim is the elder of the Snake River Polouse, which currently still, or has recently started paying taxes on lands that were given to her, obtained through a homestead.

Her father and all of her people refused to go to any of the five designated reservations. As a result of that, my mother's father fought, just like these folks here, to maintain their residence along the Snake River.

As a result of their efforts, they were given a homestead act of four tracts of 80's. My mother currently is the head of the entire family. She still meets in an annual gathering at Charbonuk Park right behind Ice Harbor Dam, which is currently controlled by the U.S. Corps of Engineers.

What my mother said in her opening statement was that she was going to sing a song in the hopes that God would give her wisdom with which to touch your hearts that she might see that you deal with a people who bleed the same way you do, who have children, who want to maintain their culture.

Their culture is an asset to this Nation. Many of its ways preserve America and all that it stands for. It is with this desire that she comes to speak before you.

Ms. CHAPMAN [through interpreter]. Mr. Selam will interpret what she says.

Mr. SELAM. Mr. Chairman, committee members, for the record my name is Lonnie Selam, Sr., and I am an elected official of the Yakima Indian Nation. I serve on the tribal council.

I have been asked to interpret for my elder, Mary Jim, whose family extends from the Snake River on up to the Polouse Country.

She has indicated in the lengthy speech the troubles that are in her heart. She suffers a lot with the different developments and impacts that are caused by development and other types of exploration within her home area.

At one time she was very happy growing up along the Columbia River being raised by her parents, both father and mother. She has known that river and has deeply respected the river. Today she suffers being denied access, being denied her way of life to the way it used to be. It causes heaviness within her heart to think about her sufferings.

She alluded to the hearing that we had this morning and concerns of the Hanford Reach. To her knowledge she knows that there are two burials that came from that area that are stored here in Washington, DC, and she is very concerned. At one point she indicated that she actually witnessed the excavation of these burials. Her grandfather was from the Polouse, and was one of them that was excavated.

On her mother's side her family lineage comes from the Wanapum area, from the Priest's rapids, and she is very concerned about the things that are being talked about today.

As you have heard her daughter interpret her way—this is our way in religious ways. We open ourself in prayer in song, and the prayer to look up to the creator—the very almighty creator who made our body, who put life into our body and heart, and it is up to the creator to take that life. It is up to that creator to guide us in his spiritual ways.

She also desires the return of those human remains, if it is possible. She has related that as one of the reasons why she has come to this part of the land. It is for some reason that guided her in this direction.

This is briefly interpreting what she has said. I will allow her to continue on.

[Daughter]. She also stated that the reason for her desire for the return of the bodies is that soon the creator is going to join the spirit and the body back together. She does not want the responsibility that her forefathers gave her in allowing these bodies to continue to be on display, much less to be studied, by the non-Indian.

She stated that it was like you could rip her heart out. Her heart looks no different from yours. It is no different.

She wants the return of these bodies that they might be restored so that when the creator comes back and joins the spirit to the body it will be where they were laid to rest.

Mr. **Selam**. Again she opens her mind that the elders were created on all parts of the land from time immemorial, and have died there in this area. That is obviously the almighty creator's law that should be left in that manner.

My grandfather's name was Fishhook Jim, who had an Indian name of Chowawachak. He had plenty of land in the Snake River area. And also Thomas. The Indian name was Tamaluk. They couldn't pronounce that in English, so the closest they came was Thomas.

She had indicated that she has no funds or money that is available to her to be running around all over the country in her attempts to retrieve what belongs to that land, being the bodies that she has alluded to earlier that are stored in the Smithsonian.

But for some reason the creator has made that way and made it possible for her to be here today to relate that to you. She constantly prays that things would go in that way, because he concern also is the other bodies that are located along the river that are undisturbed and untouched. Her mother is one of them that is inundated in the rivers of Snake River.

Harry Jim willed some land, before he passed away. Maybe you are familiar with Harry Jim. Before he passed away he willed some land and rights along with that, and to date we are unable to locate those papers. For some reason or another they are lost in the Walla Walla Courthouse.

She appreciates being here testifying before you to listen to her concerns and her prayer that you would make a way to consider retrieving those remains and bringing them back to the Snake River.

That's a summary of her testimony that was given in the Yakima language, the Polouse language, that I am translating.

She thanks you.

The CHAIRMAN. Chief Johnny Jackson, and Chief Howard Jim, Ms. Edith McCloud, and Ms. Mary Jim Chapman, you have travelled great distances at great expense to be with us and to share your words and wisdom. We thank you for this great honor you pay us.

We have heard your cries of anguish. We have heard your cries for justice and redress. Let me assure you, on behalf of this committee, that it has touched our hearts, and we will do something about this.

It may be of interest to you that last week this committee unanimously approved a bill to establish an American Museum for the American Indian. It will be located on the Mall of the U.S. Capital. It will be a most sacred spot in the most important place in our Nation's capital.

This morning that bill was approved by the Rules Committee. It will now go before the full Senate for its debate, consideration, and approval.

One of the provisions in this bill calls for the resolution of the problem that Mary Jim Chapman alluded to, the skeletal remains of American Indians.

I will instruct my staff at this moment to work with your family, and if at all possible to seek immediate return of the remains, if such can be identified. But that is the problem. This bill will call for a procedure by which we can identify and return these remains. Incidentally, there are 18,500 skeletal remains in the Smithsonian at this time.

Unfortunately, one of your best friends will be leaving us at the end of this year. He served as your Governor for many years. He has served most honorably as your Senator. He has been the voice of justice, and the voice of equity in this committee, but for some strange reason he decided to go back to his home to work there.

We are hoping that whoever succeeds him will continue in his tradition to speak up for the rights of Indian people and for justice. I would like to recognize that gentleman. Senator Evans.

Senator EVANS. Thank you, Mr. Chairman, for those words. In fact, during the course of the last several months, as we have gotten deeper and deeper into the activities of this committee and the challenges which remain ahead of us, I wonder whether, in fact, I made the right decision.

We will move as rapidly as we can. I know under the chairman's leadership we have already had an extraordinary amount of progress through this committee. There is still time to go this year.

I hope before I leave that we will have had the opportunity to put into law many of the challenges and opportunities which we have heard from so many of you.

There will still be a long finished agenda. We have got many things to do, and perhaps never will we be able to fully correct some of the mistakes made over the last century. But we can try, and we can try to provide for not only this generation, but for generations to come, better opportunities, not only in the chance to be fully involved in American society, but, at the same time, to retain and to enhance and to build upon the traditions which are so important to each of the tribes and nations of our country, and which I think can give to all the rest of us an awful lot in terms of traditions, in terms of family, in terms of respect for land and resources.

We have a lot to learn, and I hope that perhaps in a small way what we have done in this committee and what you have helped teach us will allow us to move in that direction.

It has been a real privilege to listen to all of you this afternoon.

The CHAIRMAN. I can assure you that we have already started, and we intend very sincerely to correct inequities that may be found in the Lacey Act.

Our agenda is long, as indicated by Senator Evans, but we are not afraid. We have addressed many of the controversial issues that heretofore have been set aside, and we intend to do that.

It may be of interest to you on the panel that one of the most eloquent words that guide us are the words of Chief Seattle of your area. Every member of the committee is well acquainted with the great words of that chief.

With that I thank you very much for being with us. We assure you that we will not only hear you, but we will do something about it.

Thank you very much.

Did you have something to say?

## STATEMENT OF SILICHI HICKTEM, COUNCILMAN, MID-COLUMBIA TRIBE

Mr. HICKTEM. Yes; thank you. I just wanted to introduce myself because I just came on without letting my name be known. I have an Indian name, Silichi Hicktem. I am one of the councilmen from the mid-Columbia Tribe. I have been appointed several years ago, and I have done my best as an elected councilman in our area to try to listen to the problems of my people.

Today I am thankful it came to my mind that this is not Ringling Brothers or any other circus, because in the past, before the treaties were made, our chiefs had been made to be put on as a show with a war bonnet on, such as the wild west shows. You read in history that it is the only way that the Indians in the past have been tamed, as you might say.

Now today I am glad that we could be present, and that I could come and accompany my chiefs to this Select Senate Committee meeting today. I thank you. I believe we all thank you. We forgot to mention that in our remarks.

The CHAIRMAN. Thank you very much.

With those words we will stand in recess.

[Whereupon, at 5:12 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

### STATEMENT OF VICE-CHAIRMAN DANIEL J. EVANS
### OVERSIGHT HEARING
### ON COLUMBIA RIVER INDIAN FISHERIES MANAGEMENT
### SELECT COMMITTEE ON INDIAN AFFAIRS
April 19, 1988

Today we will receive testimony about a controversy that goes back nearly 135 years. In 1855, the Nez Perce Tribe, the Umatilla Tribes, the Warm Springs Tribes, and the Yakima Indian Nation reserved fishing rights on the Columbia River and its tributaries in treaties signed with the Federal government. In the treaties the Indians were guaranteed the right "to fish in common with" the non-Indian citizens of the territory. In 1906, in United States v. Winans the United States Supreme Court ruled that the right encompassed guaranteed access to the Columbia River and its tributaries at all "usual and accustomed fishing places."

In the years after the treaties were signed, the Indians continued to harvest most of the fish taken from the waters of Puget Sound and the Columbia River. For awhile, the fact that the tribes effectively monopolized the fishery resource did not generate controversy between the Indians and the non-Indian citizens of Washington territory and Oregon state. With the

DANIEL K. INOUYE, HAWAII, CHAIRMAN
DANIEL J. EVANS, WASHINGTON, VICE-CHAIRMAN

JOHN MELCHER, MONTANA
DENNIS DeCONCINI, ARIZONA
QUENTIN N. BURDICK, NORTH DAKOTA
THOMAS A. DASCHLE, SOUTH DAKOTA

FRANK H. MURKOWSKI, ALASKA
JOHN McCAIN, ARIZONA

ALAN R. PARKER, STAFF DIRECTOR
PATRICIA M. ZELL, CHIEF COUNSEL
JOE MENTOR, JR., MINORITY COUNSEL

United States Senate
SELECT COMMITTEE ON INDIAN AFFAIRS

advent of modern commercial canning and fishing techniques, however, non-Indian fishing activities grew more intense and conflicts developed. The 1906 Winans case was but one of the consequences of the growing tensions.

Conflicts between Indians and non-Indians became more acute as hydroelectric dam construction in the Northwest decimated many fish runs. A low point was reached in the 1950s when a dam was constructed at The Dalles, Oregon. It was known at the time that building the dam could flood Celilo Falls, an area of historic importance to the Columbia River Indian tribes. Nevertheless, the decision to move forward to build the dam was made. In fact, a memorandum signed by a Regional Solicitor for the Army Corps of Engineers listed disbursement of the Indians residing at Celilo Falls as a positive benefit of dam construction. It is unconscionable that such thinking colored formulation of official policy as recently as this.

Following the construction of the Bonneville Dam in 1939 and the subsequent flooding of 37 "usual and accustomed" fishing sites on the mainstem of the Columbia River, the Secretary of War approved a settlement agreement in which the War Department agreed to acquire more than 400 acres to serve as in-lieu fishing sites. This agreement represents a solemn commitment by the Federal Government to the Indian tribes along the river to compensate them for their fishing sites taken as a result of the construction of the great mainstem hydroelectric dams. I believe it is time for us to honor this commitment, and I will make every effort to achieve this end.

In the fifty years since the 1939 agreement was executed, only 40 acres of the agreed upon 400 acres of in-lieu fishing sites have been acquired. Although the tribes continually have complained, their words have fallen on deaf ears. In fact, it has been difficult to resolve even the relatively minor issues of responsibility for operating and maintaining the fishing sites and determining where on the sites permanent residences can be located.

In the late 1970s continuing tensions between Indian and non-Indian fishermen resulted in numerous decisions clarifying the extent of Indian fishing rights. In 1974 in United States v. Washington Federal District Court Judge George Boldt ruled that the treaties signed by territorial Governor Isaac Stevens guaranteed to the descendants of Indian signators an equal share of the harvest of salmon and steelhead. In Sohappy v. Smith the Federal courts extended the principles of United States v. Washington beyond its case area.

Congress became increasingly concerned with the fate of the salmon and steelhead resource, and in the late 1970s and early 1980s it passed a number of acts to protect the fishery resource. For example, provisions were included in the Pacific Northwest Power Planning and Conservation Act to reduce the impacts on anadromous fish of hydroelectric development. Similar provisions were included in the Salmon and Steelhead Conservation and Enhancement Act, which provided for coordinated management and enhancement efforts, and the Lacey Act Amendments of 1980 to provide for enforcement of Columbia River fishery regulations.

When the Lacey Act amendments were enacted, there were no federal laws relating to the harvest of salmon and steelhead. In the late 1960s, in Washington Department of Game v. the Puyallup Tribe, the Supreme Court found that state regulations were inapplicable to Indian fishermen unless prosecutors were able to prove a "conservation necessity." Therefore, tribal regulations were the only means of policing the Indian fishery.

From discussions with tribal leaders it appears that tribes perceived the Lacey Act amendments to be necessary to provide for the application of tribal regulations to non-Indians following the Supreme Court decision in Oliphant v. Suquamish Tribe in which the Court ruled that Indian tribes do not have criminal jurisdiction over non-Indians. In their application, the Lacey Act amendments have had a much different, and broader, effect than contemplated by tribal leaders who did not oppose enactment. Even before the Lacey Act amendments were passed Federal officials began efforts to utilize tribal fishery regulations to prosecute tribal members. These efforts were undertaken without any consultation or the cooperation of tribal law enforcement officials and before federal officials were given authority by Congress to use tribal regulations against tribal members.

I believe that Indian tribes, not the Federal government, should bear primary responsibility for enforcing tribal laws. In this sense, I believe that the Lacey Act has been wrongly applied. Tragically, several Indian fishermen were caught in the middle of a struggle between two sovereign governments; a strugle, I might add, that should not have taken place.

Surely there is a need for vigorous enforcement. We should focus our efforts, however, on greater cooperation between Federal, state, and tribal enforcement activities. And this cooperation should be initiated, rather than being forced upon, the Federal Government. In the future, federal and state law enforcement officials should work in close cooperation with tribal enforcement officials to assure an adequate response.

In recent years we have seen a tremendous improvement in the management of salmon and steelhead. The fishery runs are stronger than they have been in the last several decades. This is true in large part because of the cooperation of tribes and non-Indians in efforts to manage and enhance the fishery resource. Indian tribes themselves, and their members, have the greatest interest in the preservation of the fishery resources. They have relied on the fishery for their way of life since time immemorial. And they have demonstrated their commitment to the continued strength of salmon and steelhead resources time and time again. I believe they will continue to do so in the future. The Federal government and the states are just now beginning to recognize and appreciate this very simple fact.

NEZ PERCE TREATY
[illegible]

Nez Perce
TRIBAL EXECUTIVE COMMITTEE

[illegible]
LAPWAI, IDAHO
[illegible]

(208) 843-2253

Testimony of
Allen V. Pinkham
Nez Perce Tribal Executive Committee
before the
Senate Select Committee on Indian Affairs
Washington, D.C.
April 19, 1988

Mr. Chairman, my name is Allen V. Pinkham and I am here today representing the Nez Perce Tribal Executive Committee. I want to thank you for inviting us to testify here today and for your continued interest in the issues affecting the tribes along the Columbia River and its tributaries. As you know, the Nez Perce Tribe signed a treaty with the U.S. Government in 1855. In that treaty, they reserved the right to fish at their usual and accustomed fishing sites. At that time, as now, salmon were extremely important to the tribes as food, as commerce items and for cultural and religious purposes. We estimate that between 11 and 16 million salmon returned to the river each year prior to white settlement along the Columbia.

Since 1855, the exercise of the reserved rights to fish has been severely diminished. First overfishing, then irrigation projects and finally hydroelectric dams and pollution have reduced the runs to approximately 2.5 millon adult fish per year. In addition to the loss of the fish themselves, tribal fishermen also lost their usual and accustomed fishing sites because of the construction of the dams. First, the fishing sites at the Long Narrows were inundated by Bonneville Dam. Other sites were also eliminated, including the spectacular falls at Celilo in 1957, a tragedy that profoundly affected the lives of many tribal people, including some who are here today.

Mr. Chairman, the hearing today is on the actual exercise of rights that were reserved by treaty in 1855. The courts have consistently recognized our rights, but they are meaningless if there are no fish in the river, or if we have no places to set our nets, or if we have no access to the river, or if we cannot, within the framework of the treaties, regulate our own fisheries.

We are optimistic about the long-term outlook for the fisheries. While they will never be as great as they once were, there is now a commitment in the Northwest to rebuild the runs. The Fish and Wildlife program under the Pacific Northwest Electric Power Planning and Conservation Act calls for a goal of doubling the runs by the year 2000. The Pacific Salmon Treaty with Canada had adopted harvest regimes designed to rebuild depressed chinook stocks by 1998. We are already beginning to see the results of these efforts. We have developed a cooperative management plan with the Federal Government and the states of Washington and Oregon on the management of these fisheries. However, we still have not resolved the issues of access and enforcement.

Mr. Chairman, as others have stated today, the U.S. Government made commitments to the tribes to acquire 400 acres of in-lieu sites to replace sites that were inundated by the construction of the Bonneville Dam. Those commitments have not been fulfilled. Five sites containing approximately 40 acres have been acquired. The existing sites are in poor condition and many do not have the necessary facilities. We urge that additional sites be acquired and that they be appropriately developed and maintained. Each of he sites requires a place to launch and tie up boats, good rest room facilities with showers, a drying shed and a table with water faucets to clean fish. The sites also have to be maintained. We believe that the responsibility to maintain these sites rests with the Federal Government and the financial responsibility for providing for the maintenance rests with the U.S. Corps of Engineers.

An ad-hoc committee from the Nez Perce, Yakima, Warm Springs and Umatilla tribes have toured the Columbia River and identified a number of potential in-lieu sites. These sites have not been examined by the tribal councils nor discussed with the tribal fishermen. They represent a first effort to identify areas that would be suitable as additional in-lieu sites. Those sites are identified in the briefing book prepared at your request by the staff of the Columbia River Inter-Tribal Fish Commission.

Mr. Chairman, the exercise of our right to fish must include the right to regulate tribal fisheries. Our tribal government passes laws and issues regulations that govern our fishermen and others who fish on lands and water under the jurisdiction of the Nez Perce tribal government.

There have been a number of cases recently where the Federal Government, using the Lacey Act as authority, has arrested tribal fishermen for violating tribal laws and tried them in tribal courts. Our reading of the legislative history of the Lacey Act is that it was intended to assist the tribes in the enforcement of their laws and regulations to protect tribal resources where they lacked jurisdiction to do so. Specifically, it was intended to fill in the gap in tribal enforcement caused by the supreme court decision in Oliphant v Suquamish Indian Tribe 435 U.S. 191 (1978) which held that tribes do not have reserved sovereign power to exercise criminal jurisdiction over non-Indians. It was certainly never intended to replace tribal enforcement of tribal laws with federal enforcement.

We note that the Columbia River management plan, adopted under the auspices of the U.S. v Oregon litigation, gives the tribal courts the right to try any violations of tribal regulations by tribal members. We believe that this "right of first refusal" for tribal courts is the proper approach to resolving the concerns relative to tribal sovereignty raised by the prosecutions under the Lacey Act.

We are also unaware of any attempts by Fish and Wildlife Service or the National Marine Fisheries Service to assist the tribes in enforcing tribal laws against non-Indians. Thus the enforcement agencies are not only enforcing the law in a manner that Congress never intended, they are also not following the intent of Congress to assist the tribes. We find this situation unacceptable and believe that Congress should find it unacceptable as well.

That concludes my prepared testimony. I will be happy to answer any questions you may have.

Warm Springs, Oregon 97761 / 503 553-1161

# TESTIMONY OF DELBERT FRANK, SR., ON BEHALF OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS CONCERNING COLUMBIA RIVER IN LIEU SITES

Washington, D.C.

Mr. Chairman and Members of the Committee:

My name is Delbert Frank. I am Vice Chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon. I am appearing today to express the support of the Warm Springs Tribal Council for the proposed development of additional "in lieu" fishing sites for the treaty Indian fisherman of the Columbia River.

I grew up along the Columbia River. As a young man, I fished at all of the traditional fishing places of my people, the Sahaptin-speaking bands which now comprise part of the Warm Springs confederacy. In my lifetime, I have seen the Columbia River change from the great, free flowing source of life for Indian people throughout the Pacific Northwest to its present condition, a string of reservoirs created to make electricity and encourage industrial development. For old-timers such as myself, this has been a sad thing to see. However, we were powerless to change the course of history. As Indian people, we did what we have always done: we adapted to the tremendous changes along the river. Even with the changes, our Indian people still live along the river and still fish its waters.

When the first dam was built on the Columbia in the 1930's, we were told that areas would be set aside along the shore of the reservoir behind Bonneville Dam to replace our traditional fishing rocks and sites covered by the back waters of the dam. Originally, the Corps of Engineers was to set aside nearly 400 acres at a dozen or more locations behind Bonneville Dam for these "in lieu" fishing sites. However, when these in lieu sites were finally established, only five sites, totaling less than 40 acres, were acquired. When The Dalles Dam and John Day Dam were built in the 1950's and 1960's, no in lieu sites were created to replace the traditional fishing areas lost under the reservoirs behind those dams.

Additional in lieu sites are badly needed throughout the Columbia River Indian fishing area. There are more than 16,000 members of the Warm Springs, Yakima, Umatilla and Nez Perce Tribes with treaty fishing rights in Zone 6, the 140 mile stretch of the Columbia River between Bonneville and McNary dams which is an exclusive treaty Indian fishing area. More than 300 fishermen have participated in recent fall commercial seasons, and a large number of tribal members fish the Columbia for subsistence purposes throughout the year. With an interstate freeway along the Oregon shore and a state highway and large parcels of private land along the Washington shore, the Indian people have a hard time simply getting to the river to exercise their fishing rights. Additional in lieu sites would provide needed access points, as well as areas for the Indian people to camp during fishing seasons, erect drying and smoking sheds, and build traditional fishing platforms.

Representatives of the four Columbia River treaty tribes recently toured the river and identified a number of locations suitable for additional in lieu sites. The Warm Springs Tribal Council urges the Committee to direct the Army Corps of Engineers to acquire and develop these areas as in lieu sites. We recognize that developing these additional in lieu sites will not return the river to the way it was before the dams were built, nor will it restore the fish runs and our traditional lifestyle as Columbia River Indian people. Additional in lieu sites will, however, make it a little easier for the Indian people to adapt to the tremendous changes that have taken place along the river, and it will help to fulfill a promise made to the Indian people more than 50 years ago by the federal government when Bonneville Dam was constructed. For these reasons, if none other, the additional in lieu sites should be acquired and developed.

The lack of access to the river is not the only problem presently facing the Indian people on the Columbia River. The Warm Springs Tribal Council has been very concerned about the federal government's use in recent years of the Lacey Act to enforce tribal law against tribal fishermen. The history of the "samscam" operation and federal prosecutions is well known. About half of the defendants in the federal samscam trial, held before Judge Tanner in Los Angeles, were Warm Springs tribal members. Three Warm Springs fishermen were sent to prison in 1986 as a result of those trials. Just last month, Bruce Jim, the last of our fishermen still imprisoned, returned home.

The Warm Springs defendants in the samscam case were tried and convicted by the federal government of violating Warm Springs tribal law. These cases should have been heard in tribal court, not federal court. We tried, through our attorney, to have the cases transferred to tribal court before the federal court trial took place in Los Angeles. However, that did not happen.

Our objection to the Lacey Act is that it undermines tribal sovereignty by substituting a federal court's determination of what constitutes a violation of tribal law for the judgment of the tribe itself. We object very strongly to that. We Believe that it is for the tribe to determine whether or not its law has been violated and, if it has, to punish the violator.

The Warm Springs Tribes believes that it is fully capable of policing its tribal members exercising off-reservation treaty fishing rights. We believe that our record of enforcement compares very favorably to the record of the states in enforcing their laws against nontreaty fishermen. However, development of tribal enforcement programs is undermined when the federal government takes over enforcement from the tribe through Lacey Act prosecutions against tribal members.

The Warm Springs Tribal Council believes strongly that the federal government's use of the Lacey Act to enforce tribal law against tribal members violates Congress's long-standing policy of promoting tribal sovereignty and encouraging development of tribal governments. Anything this Committee can do to change the Administration's use of the Lacey Act to prosecute tribal members for violating tribal law would be applauded by the Warm Springs Tribal Council.

Thank you very much.

*Warm Springs, Oregon 97761 / 503 553-1161*

April 28, 1988

The Honorable Daniel Inouye, Chairman
Select Committee on Indian Affairs
838 Hart Senate Office Building
U.S. Senate
Washington, D.C. 20510

Dear Chairman Inouye:

This letter is submitted as supplemental testimony to the remarks made by myself, Delbert Frank, First Vice-Chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, at the Select Committee on Indian Affairs April 19, 1988 oversight hearing on Columbia River Indian Fisheries management.

First of all, in response to the question of Senator Dan Evans, the Confederated Tribes of Warm Springs' Tribal Courts have prosecuted dozens of cases over the past decade where our Tribal members have been apprehended by Tribal law enforcement officials for alleged violations of Warm Springs fishing regulations.

On the other hand, where Warm Springs Tribal members have been apprehended by federal law enforcement officials under the Lacey Act for alleged violations of Warm Springs fishing regulations, we have never tried any such cases in our Warm Springs Tribal Courts. This is due to the Federal government's refusal to turn any of its Lacey Act prosecutions over to our Tribal Courts. This has occurred despite out best efforts to have such cases tried in our Tribal Courts. The "sam-scam" case is a prominent example of this federal reluctance. In that event, the Federal government insisted on trying Warm Springs defendants in Federal Court in Los Angles, California, where three of our Tribal members were found guilty.

We would very much like to have this sovereignty-diminishing circumstance corrected, and we appreciate the opportunity presented by your hearing to so state.

At this time,I would also like to clarify that my oral remarks during the hearing about Indian fishermen years ago regulating their activities on the Columbia River by a traditional commission were offered for historical perspective only. Back in the last century, before the dams, when fishing was conducted in its traditional manner, decisions about who fished where, when or how among the treaty Indian fishermen were often left to those on the river. Of course, their ability to fish at all was secured by the treaties, which recognize the sovereign powers inherent in our Tribal governments. In this century, with all the changes that have come about, the Confederated Tribes of Warm Springs government has found it necessary to use its sovereign powers over fishing to formally regulate that activity. Today, the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon has extensive fishing regulations in place equally applicable to all our members. We actively enforce those laws, and when violations occur, the Confederated Tribes of Warm Springs, through the exercise of our sovereign powers over our members, bring those people to justice before our Tribal Courts.

Also, in response to Senator Evans' question on Tribal enforcement of Tribal law on the river, I deferred to Mr. Tim Wapato, Executive Director of the Columbia River Inter-Tribal Fish Commission, because he played a significant role in developing the Tribal fishing law enforcement system that is on the Columbia River today.

Sincerely,

Delbert Frank, Sr.
Delbert Frank, Sr.,
First Vice-Chairman,
Tribal Council

# TESTIMONY OF THE YAKIMA INDIAN NATION ON THE NEED TO DESIGNATE ADDITIONAL "IN-LIEU" INDIAN FISHING SITES ON THE COLUMBIA RIVER AND ON PROTECTING INDIAN TREATY FISHING RIGHTS

PRESENTED TO THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

APRIL 19, 1988

GOOD MORNING. THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON THESE MOST IMPORTANT ISSUES. MY NAME IS LEVI GEORGE. I AM AN ELECTED MEMBER OF THE TRIBAL COUNCIL OF THE YAKIMA INDIAN NATION AND CHAIRMAN OF THE FISH, WILDLIFE AND LAW AND ORDER COMMITTEE. I HAVE WITH ME TODAY JEANETTE LEE, THE CHAIRMAN OF THE YAKIMA TRIBAL COUNCIL'S LEGISLATIVE COMMITTEE.

I HAVE GREAT INTEREST, CONCERN AND RESPONSIBILITY IN THE AREAS WE ARE DISCUSSING TODAY. FOR PURPOSES OF CLARITY AND ORGANIZATION, I HAVE DIVIDED MY TESTIMONY INTO TWO AREAS: (1) FULFILLMENT OF THE PROMISES OF THE CORPS OF ENGINEERS MADE TO MY PEOPLE IN 1938 TO ACQUIRE 400 ACRES OF LAND ALONG THE COLUMBIA RIVER, TO COMPENSATE IN PART FOR USUAL AND ACCUSTOMED FISHING SITES FLOODED BY CONSTRUCTION OF BONNEVILLE DAM AND (2) THE GREAT HARM DONE TO YAKIMA TRIBAL SOVEREIGNTY, FISHERY ENFORCEMENT JURISDICTION, TRIBAL GOVERNMENT AND TO INDIAN PEOPLE AS INDIVIDUALS AS A RESULT OF THE PRESENT INTERPRETATION BEING GIVEN TO THE LACEY ACT AMENDMENTS OF 1981.

SINCE TIME IMMEMORIAL THE YAKIMA PEOPLE HAVE TURNED TO THE COLUMBIA RIVER FOR THEIR FOODS, MEDICINES, CULTURE AND SPIRITUAL EXISTENCE. OUR LIFE TODAY IS TIED TO THE RIVER, EVEN THOUGH OUR PRESENTLY LIVING ELDERS HARDLY RECOGNIZE THE RIVER THEY KNEW AND WORSHIPPED ONLY 50 YEARS AGO. IN THAT 50 YEAR PERIOD THE COLUMBIA HAS GONE FROM A FREE FLOWING RIVER OF GREAT BEAUTY, FULL OF LIFE GIVING SALMON AND OTHER NUTRIENTS FOR THE YAKIMA PEOPLE TO A SERIES OF STILL WATER LAKES THROUGH WHICH OUR SALMON MUST STRUGGLE FOR THEIR EXISTENCE. UNDER THESE LAKES LIES THE HERITAGE OF THE YAKIMA PEOPLE. GONE ARE OUR TRADITIONAL VILLAGES, CAMP SITES, DRYING SHEDS, RAPIDS AND FALLS, AND USUAL AND ACCUSTOMED FISHING PLACES; COVERED BY THESE LAKES IN THE NAME OF PROGRESS. ALSO GONE ARE MANY PROMISES MADE TO US BY THE WHITE MAN DURING THE BUILDING OF THESE DAMS, INCLUDING PROMISES THAT FISH LADDERS AT THE DAMS WOULD FULLY PROTECT OUR SALMON, THAT OUR FISHERIES WOULD NOT BE LOST THROUGH PROGRESS, AND THAT OUR FISHING PLACES, AT LEAST IN PART, WOULD BE REPLACED BY "IN LIEU" SITES WHERE WE COULD CAMP, LAUNCH OUR BOATS, FISH AND PREPARE OUR CATCH. WE KNOW NOW THAT THE DAMS DESTROYED OUR FISH AND NEARLY

COST US OUR FISHERIES. ONLY A LONG, BITTER AND CONTINUING STRUGGLE HAS SAVED OUR SALMON FROM EXTINCTION.

BONNEVILLE WAS THE FIRST OF THESE DAMS. THE SECRETARY OF WAR PROMISED AND AGREED THAT THE UNITED STATES WOULD PROVIDE 400 ACRES OF LAND ALONG THE BONNEVILLE LAKE FOR THE USE OF INDIAN PEOPLE AS PLACES "IN LIEU" OF THOSE DESTROYED BY THE FLOODING. NOW, AFTER 50 YEARS, AND THE BUILDING OF EIGHT ADDITIONAL FEDERAL DAMS WHICH DESTROYED THE REST OF OUR TRADITIONAL ACRES, THE UNITED STATES HAS PROVIDED ONLY 40 OF THE PROMISED 400 ACRES. IN A LETTER DATED JUNE 22, 1973, FROM THE UNDERSECRETARY OF THE INTERIOR, JOHN C. WHITAKER, TO THE SECRETARY OF THE INTERIOR, OUTLINING THE HISTORY OF THE GOVERNMENT'S INVOLVEMENT IN THIS PROCESS, CHARACTERIZED THE GOVERNMENTS ACTIONS AS FOLLOWS:

> THE END RESULT OF THIS 34-YEAR RECORD OF SOME ACTION BUT MOSTLY DISPUTATION, APATHY AND DELAY MAY BE DESCRIBED AS FOLLOWS: IN 1939 THE UNITED STATES AGREED TO PROVIDE SIX SITES COMPRISING MORE THAN 400 ACRES WITH ADEQUATE FACILITIES; TODAY THERE ARE FIVE SITES OF SLIGHTLY MORE THAN 40 ACRES WITH INADEQUATE FACILITIES.

THAT LETTER WAS WRITTEN 15 YEARS AGO AND THE SITUATION HAS NOT CHANGED. FURTHER, THE SITES PROVIDED ARE INDEED UNDERFUNDED FOR OPERATION AND MAINTENANCE, INADEQUATELY MAINTAINED, ARE TOTALLY INADEQUATE TO SERVE THE NEEDS OF ALL OUR FISHERMEN, AND ARE IN A JURISDICTIONAL MESS. FURTHER, THE OPERATION AND MAINTENANCE FUNDING FOR THESE SITES IS SO WOEFULLY INADEQUATE AS TO HAVE CAUSED THE EXISTING SITES AND FACILITIES TO DETERIORATE DRASTICALLY. ADEQUATE FUNDS MUST BE MADE AVAILABLE FOR OPERATION AND MAINTENANCE ON A CONTINUING BASIS FOR EXISTING AND FUTURE SITES IF THE PROMISE OF THE UNITED STATES IS TO BE FULFILLED.

FURTHER, LAW ENFORCEMENT ON THE PRESENT IN LIEU SITES IS CREATING SERIOUS PROBLEMS FOR THE TRIBES. SINCE THE DECISION IN THE **OLIPHANT** CASE, NON-INDIANS ARE TRESPASSING ON THESE SITES WITH IMPUNITY. INADEQUATE FUNDS FOR FEDERAL ENFORCEMENT HAS FURTHER AGGRAVATED THIS SITUATION. AS IS DISCUSSED LATER, THE LACEY ACT AMENDMENTS OF 1981, HAVE ALSO CREATED A JURISDICTIONAL PROBLEM FOR THE YAKIMA TRIBE AND ITS MEMBERS.

WHAT CAN BE DONE TO RESOLVE THIS PROBLEM? THE YAKIMA INDIAN NATION OFFERS SEVERAL SOLUTIONS FOR THIS COMMITTEE'S CONSIDERATION:

(1) REQUIRE IMMEDIATE IDENTIFICATION BY THE CORPS OF ENGINEERS OF ALL LANDS HELD BY THEM WHICH WOULD BE SUITABLE FOR DEVELOPMENT INTO "IN LIEU" SITES; (WE HAVE SPENT A CONSIDERABLE AMOUNT OF TIME OF LATE TRAVELING UP AND DOWN THE RIVER BY WATER AND LAND IDENTIFYING POTENTIAL SITES AND HAVE EVEN COMMENCED TITLE SEARCHES ON A NUMBER OF PARCELS.)

(2) REQUIRE THAT THE CORPS OF ENGINEERS IMMEDIATELY BEGIN DEVELOPMENT INTO "IN LIEU" SITES SUITABLE LANDS PRESENTLY IN ITS OWNERSHIP, IN CONSULTATION WITH TRIBAL GOVERNMENTS;

(3) REQUIRE THE CORPS OF ENGINEERS TO IMMEDIATELY CONSULT WITH TRIBAL GOVERNMENTS TO DETERMINE ADDITIONAL SITES WHICH THE CORPS NEEDS TO ACQUIRE TO FULFILL ITS 1938 AGREEMENT; AND IF NECESSARY SUPPORT APPROPRIATIONS SUFFICIENT TO ACQUIRE AND FULLY DEVELOP THESE SITES;

(4) REQUIRE THE CORPS OF ENGINEERS TO INCLUDE IN ITS BUDGET SUFFICIENT FUNDS FOR OPERATION AND MAINTENANCE OF ALL SITES. ANY LEGISLATION DEALING WITH THIS FUNDING SHALL PROVIDE THAT INDIAN TRIBES MAY CONTRACT FOR THESE FUNDS PURSUANT TO P.L. 93-638;

(5) REQUIRE THAT THE CORPS OF ENGINEERS IMMEDIATELY CONSULT WITH TRIBAL GOVERNMENTS AND INTERESTED INDIVIDUALS IN THE SELECTION AND ACQUISITION OF ADDITIONAL SITES.

OUR SECOND CONCERN IS THE SERIOUS EROSION OF TRIBAL SOVEREIGNTY AND JURISDICTION, AND INDIVIDUAL HARM DONE TO INDIAN PEOPLE BY THE MANNER IN WHICH THE LACEY ACT AMENDMENTS, PASSED BY CONGRESS IN LATE 1981, HAVE BEEN INTERPRETED. I AM HERE REPRESENTING NOT ONLY THE YAKIMA INDIAN NATION, BUT OUR MEMBERS WHO HAVE SUFFERED AS A RESULT OF THE UNJUST APPLICATION OF THIS HARSH LAW. THIS TESTIMONY IS NOT INTENDED TO REQUEST A REPEAL OF THE LACEY ACT PER SE, BUT ONLY AN AMENDMENT OF THAT ACT OR THE ENACTMENT OF SEPARATE LEGISLATION AS IT RELATES TO PROSECUTION OF INDIANS IN THE EXERCISE OF RIGHTS PROPERLY GOVERNED BY TRIBAL, NOT STATE OR FEDERAL, LAW. IT IS THESE PORTIONS OF THE ACT WHICH HAVE, IN OUR OPINION, BEEN MISINTERPRETED, MISAPPLIED, AND USED AS A TOOL TO UNDERMINE TRIBAL SOVEREIGNTY AND TO CREATE DISHARMONY AMONG OUR PEOPLE AND GOVERNMENT.

INDIAN PEOPLE WERE TOLD THAT THE INCLUSION OF INDIAN LANGUAGE IN THE LACEY ACT AMENDMENTS WAS INTENDED TO HELP FILL THE

JURISDICTIONAL VOID RESULTING FROM THE SUPREME COURT'S RULING IN OLIPHANT V. SUQUAMISH TRIBE, _____U.S._____. HOWEVER, RATHER THAN SOLVE THAT SERIOUS LAW ENFORCEMENT PROBLEM, THE ACT WAS IMMEDIATELY TURNED AGAINST THE VERY PEOPLE IT WAS SUPPOSEDLY INTENDED TO ASSIST. IN FACT, ACCORDING TO DOCUMENTS ON FILE IN THE FEDERAL PROSECUTION OF DAVID SOHAPPY, NATIONAL MARINE FISHERIES AGENTS, IN THE FALL OF 1981, WERE ALREADY CONDUCTING A "STING" OPERATION AGAINST TREATY INDIANS IN ANTICIPATION OF PASSAGE OF THE AMENDMENTS. THE TRIBAL GOVERNMENTS WHOSE MEMBERS WERE THE SUBJECT OF THIS "STING" AND WHO HAD VALID, OPERATIONAL LAW ENFORCEMENT ARMS WERE DELIBERATELY EXCLUDED BY THE FEDERAL GOVERNMENT.

IT SHOULD BE OF INTEREST TO THIS COMMITTEE THAT AT THIS SAME TIME THE YAKIMA TRIBE WAS ACTIVELY PURSUING LITIGATION AGAINST THE NATIONAL MARINE FISHERIES SERVICE AND THE DEPARTMENT OF COMMERCE FOR ITS HARVEST PRACTICES IN THE PACIFIC OCEAN, CLAIMING THAT HARVEST REDUCTIONS WERE NECESSARY TO MEET YAKIMA TREATY RIGHTS. IT IS INDEED CURIOUS THAT THIS SAME BRANCH OF GOVERNMENT AT THIS VERY POINT IN TIME, WOULD USE AN INTERPRETATION OF THE LACEY ACT TO HARSHLY PUNISH TRIBAL FISHERMEN AND APPLY AN INTENT TO THAT ACT WHICH WOULD CAUSE TRIBAL DISHARMONY AND DAMAGE TRIBAL SELF-REGULATING AUTHORITY.

FURTHER, WHEN EFFORTS WERE MADE BY THE YAKIMA NATION TO GAIN PRIMARY JURISDICTION OVER PROSECUTION OF THEIR TRIBAL MEMBERS UNDER THE LACEY ACT, PURSUANT TO OUR SELF-REGULATORY AUTHORITY, THE UNITED STATES REFUSED TO RECOGNIZE TRIBAL REGULATORY PRIMACY AND CONTINUED ITS FEDERAL PROSECUTION. THE RESULTS OF THOSE PROSECUTIONS, AND THE GROSSLY DISPROPORTIONATE SENTENCING RECEIVED BY THE DEFENDANTS, ARE WELL RECORDED IN THE CORRESPONDENCE BETWEEN SENATORS INOUYE AND EVANS AND THE YAKIMA INDIAN NATION. I WOULD ASK THAT THESE LETTERS BE MADE PART OF THE RECORD OF THIS HEARING.

THE YAKIMA NATION, FROM TIME IMMEMORIAL HAS REGULATED THE FISHERY RESOURCE IN THE COLUMBIA RIVER. OUR PEOPLE HAVE HARVESTED THE RESOURCE FOR THEIR NEEDS AND HAVE RESPONSIBLY MANAGED IT FOR CONSERVATION PURPOSES. IT HAS ONLY BEEN SINCE THE COMING OF THE WHITE MAN AND THE OVERLAY OF "PROGRESS" -- LOGGING, AGRICULTURE, POLLUTION, DAMS -- THAT OUR RUNS CAN NO LONGER MEET OUR NEEDS AND REQUIRE OTHER PROTECTION. IN SPITE OF THE RESOURCE PROBLEM CAUSED BY OTHERS, THE YAKIMA INDIAN NATION HAS CONTINUED TO RESPONSIBLY MANAGE ITS FISHERIES AND FISHERMEN. THIS

RESPONSIBILITY HAS BEEN REPEATEDLY RECOGNIZED BY THE FEDERAL COURTS (SETTLER V. LAMEER, 507 F.2d 231 (9TH CIR. 1974); UNITED STATES V. WASHINGTON, 384 F. SUPP. 312) AND HAS NEVER BEEN RELINQUISHED BY THE YAKIMA NATION.

THIS RESPONSIBLE MANAGEMENT HAS ONLY BEEN ERODED BY THE ACTS OF THE ONE INTENDED TO BE OUR PROTECTOR -- THE TRUSTEE UNITED STATES. THIS IS THE SAME GOVERNMENT THAT STOOD SHOULDER TO SHOULDER WITH US IN OUR BATTLES FOR RECOGNITION AGAINST THE STATE OF WASHINGTON AND OREGON, AND SUPPORTED OUR SELF-REGULATORY AUTHORITY WHEN IT WAS CHALLENGED BY THOSE ENTITIES. NOW, AFTER MUCH LITIGATION AND YEARS OF DISCUSSION, WE FIND OURSELVES ALLIED WITH THOSE VERY STATES WHO, IN THE RECENT UNITED STATES V. OREGON MANAGEMENT PLAN, HAVE CONSENTED TO THE PRIMACY OF TRIBAL REGULATIONS AND WHO HAVE AGREED THAT A PROSECUTION IN THE TRIBAL COURT, REGARDLESS OF OUTCOME, WILL BE RECOGNIZED WITH FINALITY. HOW STRANGE THAT THE TRUSTEE NOW REFUSES THE SAME RECOGNITION. THE LANGUAGE OF THE MANAGEMENT PLAN STATES THAT:

> IN NO EVENT SHALL CASES REFERRED TO TRIBAL COURT SUBSEQUENTLY BE PROSECUTED IN STATE COURT UNLESS THERE WERE NO CHARGES FILED IN TRIBAL COURT.

THE UNITED STATES, THROUGH THE JUSTICE DEPARTMENT REFUSES TO RECOGNIZE THAT PROVISION, CLAIMING THAT IT CANNOT WAIVE THE MANDATE OF THE LACEY ACT. ACCORDINGLY, AMENDMENT OF THAT ACT OR THE ENACTMENT OF A FREE STANDING STATUTE IS NECESSARY TO REFLECT THE TRUE STATUS OF TRIBAL SELF-REGULATORY AUTHORITY. THIS IS NOT A UNIQUE CONCEPT IN FEDERAL LAW. THE FEDERAL CODE, 18 USC 1152, ALREADY PROVIDES SIMILAR RECOGNITION WITH REGARD TO PROSECUTION UNDER TRIBAL LAWS IN OTHER AREAS.

THE YAKIMA NATION REQUESTS THAT THE INDIAN AFFAIRS COMMITTEE ASSIST IN EITHER AMENDING THE LACEY ACT AS FOLLOWS:

> THIS ACT SHALL NOT EXTEND TO ANY INDIAN COMMITTING ANY OFFENSE WHO HAS BEEN PROSECUTED UNDER THE LOCAL LAW OF THE TRIBE OR TO ANY CASE WHERE THE TRIBE IN QUESTION HAS BEEN DETERMINED TO BE A SELF-REGULATORY INDIAN TRIBE.

OR THAT YOU PROPOSE A SEPARATE BILL THAT WILL PROTECT OUR SOVEREIGNTY AND JURISDICTION. SUCH AN AMENDMENT WILL NOT ONLY RESTORE THE SOVEREIGNTY OF THE YAKIMA INDIAN NATION BUT WILL

ALLOW OUR PEOPLE TO CONTINUE TO FISH IN THE MANNER THEY HAVE DONE FOR CENTURIES BEFORE THE COMING OF THE WHITE MAN. WE HAVE HAD PRELIMINARY DISCUSSIONS WITH YOUR STAFF ON VARIOUS VERSIONS OF A FREE STANDING BILL THAT WOULD BE WITHIN THIS COMMITTEE'S JURISDICTION AND BELIEVE WE HAVE MADE SIGNIFICANT PROGRESS. WE SHOULD REMIND THE COMMITTEE THAT WE RESERVED FISHING AND HUNTING RIGHTS TO OURSELVES IN OUR TREATY OF 1855 AND ANY LEGISLATION BEING CONSIDERED MUST TAKE HUNTING INTO ACCOUNT AS WELL AS FISHING.

WE HAVE FILED WITH OUR TESTIMONY INFORMATION REFLECTING TRIBAL ENFORCEMENT ACTIVITIES DURING THE LAST SEVERAL YEARS. IF WE CAN SUPPLY ANY OTHER INFORMATION TO THE COMMITTEE, WE WILL BE HAPPY TO DO SO AND WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955

CONFEDERATED TRIBES AND BANDS
*Yakima Indian Nation*

POST OFFICE BOX 151
TOPPENISH, WASHINGTON 98948

GENERAL COUNCIL
TRIBAL COUNCIL

May 5, 1988

Honorable Daniel Inouye
Chairman
Honorable Daniel Evans
Vice-Chairman
Select Committee on Indian Affairs
United States Senate
SH-838 Hart Building
Washington, D.C. 20510

Dear Senators Inouye and Evans,

On April 1[illegible], 1988, your Committee held an oversight hearing on Columbia River Indian Fisheries Management. This hearing dealt with the manner in which the Lacey Act is being implemented against tribal fishermen and also focused on the acquisition of additional "in-lieu" fishing sites. On behalf of the Yakima Indian Nation, we want to again thank you for scheduling this hearing and hopefully rectifying those problems identified as quickly as possible.

During the questioning of panel I, of which I was a member, a number of questions were posed on which I have had further opportunity to reflect and I am now submitting for the official hearing record supplemental answers to those questions.

Senator Evans asked what relationship we would like to see exist between the Tribes and the Federal government relative to the Lacey Act and tribal fishing regulations. As the Yakima Nation is a self-regulating tribe it is our position that we have the exclusive right to prosecute our own tribal members who have violated the Yakima Fish and Wildlife Ordinance. We have a law enforcement branch patrolling the Columbia River and we have a tribal court system that has jurisdiction to try and punish violators. We can not allow other jurisdictions to enforce our tribal laws against our members. This is a major foundation of our tribal sovereignty. The Columbia River Fish Management Plan, which was recently submitted to the Federal District Court pursuant to U.S. v. Oregon, contains relevant provisions in which the states of Oregon and Washington agreed to defer to tribal courts the prosecution of tribal members who violate tribal fish and wildlife ordinances. They further agreed that tribal prosecution will be recognized with finality regardless of the outcome. There is no reason that the federal government should not adhere to this same rationale.

If a federal fisheries enforcement officer becomes aware that a tribal member is violating tribal law, that officer should first attempt to contact his counterparts in the tribal law enforcement division so that they can determine if such action does indeed warrant an arrest and/or confiscation of property. If immediate action by the federal official is absolutely necessary and there is not adequate time to notify tribal law enforcement personnel then the federal official should make an arrest and defer prosecution to tribal court. Tribal and federal law enforcement personnel should be cross-deputized to assist in these situations. Clearly, the federal officials should assist tribes during the prosecution if they made the original arrest or have information or evidence that would be helpful in tribal court. We also do not feel that other jurisdictions should be entrapping Indians to get them to violate tribal law. If there is a suspicion of pending tribal offenses then our law enforcement division should be notified.

Senator Evans asked how many fish and wildlife violations the Yakima Indian Nation has prosecuted against tribal members. Over the course of the past three years we have successfully attained 45 criminal convictions. During the past two years (1986 and 1987) we have convicted 38 members on civil charges. To date in 1988 we have had 16 fishing cases filed. Four are still pending and there have been 11 convictions of the 12 cases that have been prosecuted. In these eleven convictions we have issued fines and suspended fishing privileges from four to six months in five cases and issued fines in six cases. We think this demonstrates a good track record and shows that our court system is diligent in its responsibility to implement the law.

Senator Evans asked if the Yakima Indian Nation was prepared to assert its own jurisdiction over all tribal members for alleged violations of tribal fishing ordinances. I misunderstood the question when it was posed and want to emphatically tell the Committee that the Yakima Indian Nation is indeed not only prepared but fully intending to prosecute those tribal members who violate our laws. Clearly this is evidenced by the data in the above paragraph. We have enforced our laws through traditional methods for thousands of years and have had a fully functioning court system since 1953. It is not a question of what we are prepared to do but what we are willing to continue doing and that is enforcing our laws fairly and equitably to every enrolled member of our tribe. On August 6, 1986 our Tribal Council passed a resolution relative to the pending federal Lacey Act prosecutions which also made it quite clear that we will prosecute tribal members who violate our laws and codes. I am attaching it for the record.

Senator Evans also asked a related question regarding the relationship between the Indians who live on the Columbia River and the Yakima Nation. The inference of the question was are these people members of the Yakima tribe, do they have special fishing privileges and should they be obligated to abide by tribal ordinances? As I mentioned in my testimony, most of these river fishermen are descendants of what was known as the Kah-milt-pah band. This band, represented by Slakish at the treaty signing of 1855, was one of the original 14 bands that comprised the Confederated Tribes and Bands of the Yakima Indian Nation. The descendants of this band are indeed enrolled members of the Yakima Tribe and are eligible for all related benefits and services as other tribal members receive. I believe all of the people living along the river are enrolled at either Yakima, Warm Springs or Umatilla. Anyone who contends that they are not a member of one of the three tribes should be questioned as to what the nature of their fishing rights are. In that regard, I would agree with the statement made by Allen Pinkham that the fishing right is a tribal right, reserved by a government on behalf of its people and it is not an individual right. If these people are in fact not members of a tribe that has a treaty reserved fishing right then they may have no unique fishing rights themselves. In further answering your question, if these people are enrolled members of our tribe, they have to abide by our fishing regulations. They are no different than any other tribal member. All of us must abide by the laws of our tribe.

In addition to further clarifying the position of the Yakima Nation on questions that were posed to us during the hearing, we also want to comment on some of the points made during the questioning of the federal agencies panel. There were points some of the agency representatives made that are not correct.

During the testimony and at various points during the questioning the representatives of the National Marine Fisheries Service, the Fish and Wildlife Service and the Justice Department repeatedly referenced what they feel is the limited power of tribal courts to sentence tribal members. Mr. Bavin even said he was concerned that non-Indians could end up with more severe sentences than Indians could [if the federal government allowed the tribes exclusive jurisdiction over tribal members]. In light of the multiple year sentences received by the Sohappy's when compared to the suspended sentences and fines received by non-Indians in the examples referenced by Senator Inouye (Roy Scott, Stephen Olgier, U.S. v. 595,000 Pounds of Salmon, etc.) I would say that to date the exact opposite of Mr. Bavin's theoretical fears have been the rule.

Furthermore, there are additional penalties that tribal courts can hand out beyond the one year referenced by the federal officials. First of all, the one year sentencing provision is per count not per individual. As long as the person being prosecuted is charged with more than one act he or she can be sentenced up to one year per each separate act or count and separate trials are not necessary for each count. Additionally, tribal courts have the authority to confiscate nets, to fine up to $5,000 per count, to withdraw fishing permits from our members - thereby completely preventing them from fishing - and can deprive them of exercising other rights. Clearly, these are very severe sentences and should be viewed by the federal government as being more than sufficient to ensure that a deterrent is established and that equitable penalties are available.

During Senator Evans questioning of Mr. Pallozzi of the NMFS, he was asked when the tribal police were notified of the ongoing "Salmon Scam". Mr. Pallozzi indicated that he was not sure when the tribe was notified of the ongoing sting operation. We were never notified and given an opportunity to take action and did not find out about the operation until the raid took place at Cook's Landing. At no point did the federal government contact us as they would have had we been a state government. Furthermore, they would not turn the case or the evidence over to us for tribal court prosecution when we requested it.

I hope that these answers help clarify the position of the Yakima Tribal Council on these important issues. Thank you again

Senator Inouye
Senator Evans
Page Five

for holding this hearing and being so responsive to our people.

Sincerely,

Levi George
Levi George
Chairman of the Fish,
Wildlife and Law and
Order Committee

Concur:

For Harvey E Adams
Melvin R. Sampson
Tribal Council Chairman

Jeannette Lee
Jeanette Lee
Chairman of the Legislative
Committee

## RESOLUTION T-103-86

WHEREAS, the Confederated Tribes and Bands of the Yakima Indian Nation is a sovereign Indian Tribe pursuant to its reserved powers under the Treaty of 1855, and under its unwritten laws existing since time immemorial, and

WHEREAS, the Confederated Tribes and Bands of the Yakima Indian Nation has since time immemorial exercised regulations over its members in the exercise of treaty secured rights, and

WHEREAS, the self-regulatory right of the Yakima Indian Nation has been affirmed by the Federal Court in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and

WHEREAS, the Yakima Indian Nation exercises self-regulatory jurisdiction over its members on the Columbia River with regard to subsistence and ceremonial fisheries, and

WHEREAS, the Congress of the United States passed the Lacey Act, exempting treaty secured rights from its operation, and

WHEREAS, Lacey Act's reference to Indian rights was intended to aid and strengthen tribal jurisdiction over non-Indians violating tribal laws in Indian country, and

WHEREAS, the United States Justice Department and the National Marine Fisheries Services, under a claim of jurisdiction under the Lacey Act, conducted a "sting" operation against Yakima tribal fishermen resulting in prosecution of numerous tribal members in the federal courts, and

WHEREAS, the "sting operation" and the prosecutions did not comply with the intent of Congress in enacting the Lacey Act as it related to Indian people, and

WHEREAS, the Yakima Indian Nation in response to these prosecutions requested that the United States defer the prosecutions to the Yakima Tribal Court for prosecution under tribal law and the United States government refused, and

WHEREAS, the Yakima Indian Nation, pursuant to Article 8 of the Treaty of 1855, did not interfere with the process of the federal prosecutions, and

WHEREAS, the Indian Defendants in these federal prosecutions were not, in the opinion of the Yakima Indian Nation, afforded the opportunity to present a full and adequate defense based upon their treaty secured rights and rights to freedom of religion, and

WHEREAS, said defendants have been instructed to report to federal prisons on August 8, 1986 to begin serving sentences given them under these prosecutions which violated the intent of the Lacey Act, and

WHEREAS, the Yakima Indian Nation now intends to exert jurisdiction over its members under its self-regulatory power and prosecute said members in the Yakima Tribal Court, and

WHEREAS, the Yakima Tribal Prosecutor, pursuant to this resolution and tribal laws and codes, shall be instructed to charge and prosecute all Yakima tribal federal defendants and any other persons who in his discretion have violated tribal laws, and

WHEREAS, the Yakima Indian Nation expects the federal government to exercise comity toward these prosecutions while the defendants are in the custody of the Yakima Indian Nation.

NOW, THEREFORE, BE IT RESOLVED, as follows:

1. That the Yakima Indian Nation has reserved the powers to regulate its members in the exercise of their treaty rights;

2. That the Yakima Indian Nation pursuant to its self-regulatory status, has an adequate criminal justice system available to handle these cases;

3. The Yakima Nation Tribal prosecutor shall prepare and file charges against all Yakima tribal members who are defendants in the Federal District Court proceedings and any other individual who in this discretion should be prosecuted in the Tribal Court, and

4. That the United States government exercise comity toward the tribal prosecutions.

DONE AND DATED on this 6th day of August, 1986, by the Yakima Tribal Council, by a vote of 12 for and none against.

Melvin R. Sampson
Melvin R. Sampson, Chairman
Yakima Tribal Council

ATTEST:

Levi George
Levi George, Secretary
Yakima Tribal Council

# STATEMENT OF ROBERT D. BARACKER, ACTING DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS (TRUST & ECONOMIC DEVELOPMENT), DEPARTMENT OF THE INTERIOR, BEFORE THE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS' OVERSIGHT HEARING ON COLUMBIA RIVER FISHERIES MANAGEMENT.

April 19, 1988

Mr. Chairman and members of the Committee. I am pleased to have this opportunity to discuss the continuing concerns of the Confederated Tribes of the Warm Springs and Umatilla Reservations of Oregon, the Confederated Tribes and Bands of the Yakima Reservation in Washington, and the Nez Perce Tribe of Idaho regarding the Columbia River treaty fishing issue relating to the acquisition and use of Federal lands in lieu of former usual and accustomed fishing stations which were inundated by construction of the Bonneville Dam in 1938.

Survey and construction activities for the Bonneville Dam began in 1933. Because fishing for salmon was the single most important livelihood pursued by these Indian people, both Indian tribes and individuals expressed their desire to have ancient and accustomed fishing stations replaced since such areas would be flooded after the dam was completed.

Negotiations between the U. S. Army Corps of Engineers (Corps) and the affected Indian tribes (who have treaty reserved rights to fish off-reservation) for setting aside lands for replacement or "in-lieu" fishing sites concluded in an agreement in 1939. The agreement provided for the purchase or acquisition of six sites totaling approximately 400 acres in lieu of ancient and accustomed fishing stations and for improvements thereon.

This agreement was approved by the Corps in 1940, and subsequently funded by Congress through the authority of the Act of March 2, 1945 (59 Stat. 22).

To date, of the originally agreed upon area, the Department of Interior has received a total of 41.5 acres for sites in lieu of ancient and accustomed fishing stations flooded in 1938.

The Bureau of Indian Affairs has been aware of all of the events that have occured since 1933 regarding these "In Lieu Sites". I will be happy to answer any questions you may have about the history of our current activities to assist the tribes in acquiring additional lands tobe designated as "In Lieu Sites".

Shortly thereafter, the tribes submitted resolutions approving the terms of the agreement. In 1940 it was approved by the Corps. The Act of March 2, 1945 (59 Stat. 22) authorized the Secretary of War "to acquire lands and provide facilities in the States of Oregon and Washington to replace Indian fishing grounds submerged or destroyed as a result of the construction of the Bonneville Dam." $50,000 was approved to accomplish this.

In 1942 the Corps purchased 4.19 acres for a flowage easement. In 1963 this lot was transferred to the Department of the Interior (DOI) as an "in-lieu site".

In 1947 a meeting between Indian tribes, the Corps and the Bureau of Indian Affairs (BIA) was held at The Dalles, Oregon. Among other agenda items was the amount of funding needed for improvements and development of the proposed in-lieu sites. The improvements discussed were: leveling land, access to sites, water, sanitation, incinerators, fish drying rocks and sheds. The Indians requested that all sites be acquired before spending funds for facilities.

In 1950 a site called Big Eddy, which consisted of 225 acres and which was being considered by the Corps as a potential in-lieu site, was purchased by the Corps. However, other requirements resulted in the construction of The Dalles Dam which flooded most of this site in 1957. Thus, it was never transfered to DOI and there is no record of consideration of a substitute site for Big Eddy.

The following table is an account of existing sites:

| Name | Size | Location | Acquired |
|---|---|---|---|
| Big White Salmon | 4.19 Acres | Washington | 1942 |
| Little White Salmon | 3.14 Acres | Washington | 1959 |
| Lone Pine | 9.00 Acres | Oregon | 1956 |
| Wind River | 23.6 Acres | Washington | 1959 |
| Cascade Locks | 1.6 Acres | Oregon | 1963 |

In 1955 pursuant to Public Law 62 (69 Stat. 85), Congress increased the authorized amount of funds for in-lieu sites from $50,000 to $185,000 by amending the 1945 Act.

By early 1957 the tribes were becoming increasingly concerned that the Corps was not going to fulfill the 1939 agreement to provide six in-lieu sites. In September 1959 the Corps' Division Engineer for the North Pacific Division referred the matter back to the Chief of Engineers (D.C.) with the recommendation that the Chief report to Congress that the Corps was unable to complete acquisition of the in-lieu sites.

In the early 1960's Indian fishermen and their families were attempting to utilize the existing sites for fishing and related activities, however no improvements or sanitation facilities existed. The U.S. Public Health

Service was alerted to the deteriorating health conditions on these sites. Conditional to vacating the sites, the tribes suggested that the balance of the appropriated $185,000 which was $75,327 be spent to improve the sites' sanitary facilities.

On November 24, 1960, the Corps had written to the tribes stating that unless new plans could be developed regarding alternate sites for Big Eddy and Herman Creek (since they are no longer available), they would have to notify Congress that the money would be returned. On April 19, 1961, the Corps submitted a financial statement illustrating that a portion of the $75,327 was being proposed to purchase 1.6 acres at Cascade Locks.

On July 20, 1968, the tribes agreed to forego acquisition of the sixth site and to use the balance of $40,873 to improve the other four sites. The tribes believed this action to be a compromise and considered it temporary because they needed more land to facilitate camping, parking cars, trucks and trailers, and launching boats.

In 1973, the Bonneville pool level was increased through an operation called "power peaking". The resultant higher water level meant that portions of the existing sanitary facilities were affected. An additional $234,000 was appropriated by Congress through BIA to install restrooms, water, sewer and other waste disposal systems. The projects were completed and a dedication ceremony (1975) was held to open the newly improved sites.

In March of 1974 the Corps submitted proposed legislation to the Congress seeking authority to purchase additional lands for "In Lieu Sites" as the existing sites were deemed insufficient in area and inadequate to meet the needs of Indian fishermen.

Today there are approximately 400 active Indian fishermen participating in commercial ceremonial and sustenance fisheries in the Columbia River. A major problem for Indian fishermen using these sites continues to be crowding and difficulty in their ability to launch boats a reasonable time before fishing season opens as well as to haul boats out upon season closures. Today there are two (2) sites (on the Washington side of the River) which have useable boat launch facilities.

This concludes my prepared statement. I would be happy to answer any questions the Committee may have.

# STATEMENT OF
# MORGAN R. REES
# DEPUTY FOR POLICY, PLANNING, AND LEGISLATIVE AFFAIRS
# OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
# (CIVIL WORKS)

BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
APRIL 19, 1988

NOT TO BE RELEASED UNTIL APPROVED BY THE
SELECT COMMITTEE ON INDIAN AFFAIRS

STATEMENT BY MORGAN R. REES, DEPUTY FOR POLICY, PLANNING AND
LEGISLATIVE AFFAIRS
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
FOR CIVIL WORKS
BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

**MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:**

My name is Morgan Rees. I am Deputy for Policy, Planning, and Legislative Affairs in the Office of the Assistant Secretary of the Army (Civil Works). Accompanying me today are Mr. Bernie Bishop, Chief of Master Planning/Cultural Resources Section from the Corps Portland District and Mr. Charles Flachbarth, our attorney from the Corps Office of Counsel in Washington. Assistant Secretary Page regrets that he can not appear before you today to discuss the important issue of Indian fishing rights on the Columbia River.

We are here to discuss the status of the law, pertinent agreements and actions taken with respect to the provision of Federal lands along the shoreline of the Columbia River for the use of the Yakima, Umatilla, Warm Springs, and Nez Perce Tribes as in-lieu fishing sites in compensation for historically used sites which were inundated by reservoirs constructed by the Federal government.

## BACKGROUND

In 1855 these Tribes first entered into treaties which were ratified in 1859. Under these treaties, the tribes ceded to the Federal Government all Indian title to the lands other than the reservations that they currently occupy in the Columbia River Basin and reserved for themselves the right to fish the banks of the lower Columbia River.

Since the treaties were approved, the Federal government through the United States Army Corps of Engineers has constructed four multi-purpose dams on the main stem of the lower Columbia River in Oregon and Washington. These four are in addition to ten other dams on tributary waterways in Oregon, Idaho, and Washington as well as four dams on the lower Snake River in Washington. The four dams on the Columbia River mainstem serve to generate 6,040 MW of hydroelectric power and provide navigation facilities to carry approximately 6.4 million tons of cargo annually. These dams also provided nearly 4.5 million recreation user days in 1986 alone. The Department of the Interior and other private and public utility districts have also constructed numerous power generating projects on the main stem of the Columbia and Snake Rivers and other tributary streams.

## STATUS OF AGREEMENTS AND LAWS

There are two agreements, one reached in 1939 and another in settlement of a lawsuit in 1972 which affect the provisions of in-lieu sites. In addition, the 1945 River and Harbor Act authorized acquisition of unspecified sites and facilities.

## THE 1939 AGREEMENT

The first of the major projects constructed on the lower Columbia was the Bonneville Dam, constructed in the mid-1930's. The construction of the Bonneville Dam resulted in the inundation of 37 usual and accustomed Indian fishing places on the mainstem of the Columbia River between Bonneville Dam and The Dalles. An agreement was negotiated with the Indian tribes for inundation of their accustomed fishing sites in 1939 and approved in 1940 by the Secretary of War. The agreement called for the Government to acquire more than 400 acres of land at six described sites to serve as "in-lieu" fishing sites. The Corps was to make certain improvements thereon, and thereafter turn the sites over to the Department of the Interior, Bureau of Indian Affairs, to be administered for the permanent use and enjoyment of the Indian tribes.

Section 2 of the 1945 River and Harbor Act was the Congressional implementation of the "agreement" between the Government Officials and the Tribes. Congress authorized the Secretary of War "...to acquire lands and provide facilities...to replace Indian fishing grounds submerged or destroyed as a result of the construction of Bonneville Dam..." Funds not to exceed $50,000 were authorized to be expended for this purpose. This amount proved inadequate for acquisition, and was subsequently raised by Congress in 1955 to $185,000. However, the Act did not specify the number, location, or size of the sites to be acquired.

Because of disagreements among the various parties to the agreement of 1939, not all the sites outlined in the agreement were acquired and some sites were substituted. In all, five tracts, totalling 40 acres, were purchased for the use and benefit of the Indians. The decisions concerning acquisition of the sixth site and disposition of the balance of the funds for improvement of the sites authorized by the 1945 River and Harbor Act were approved by the Umatilla, Warm Springs, and Yakima governing bodies. In acquiring 5 sites, and expending the total amount of funds appropriated by Congress, the Corps is not permitted by law to acquire any additional in-lieu sites. However, as will be discussed later, there are administrative options which could be used to establish in-lieu fishing sites on Federal land.

## THE 1972 AGREEMENT

Based on the original authorization for construction of Bonneville Dam, in the late 1960s and early 1970s the Bonneville Power Administration and the Corps of Engineers began studies to enlarge the capacity of the existing Bonneville power-generating capability. This was accomplished by raising the water levels behind the dam to generate additional power at peak loads to help meet the Pacific Northwest Power requirements. This proposal was the subject of a lawsuit, CONFEDERATED

TRIBES OF THE UMATILLA INDIAN RESERVATION v. CALLAWAY in the United States District Court in Oregon. At issue was the effect of the change in the levels of the Bonneville pool on certain of the in-lieu sites, and on the migration of salmonoid fish.

A settlement to the CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION v. CALLAWAY lawsuit was reached in 1972 between the Executive Branch of the Federal Government and the Indian tribes. The Executive Branch agreed to try to obtain additional authority from Congress to acquire additional in-lieu sites for the tribes for fishing sites lost in the Bonneville, the Dalles, and John Day Pools, and to improve the facilities at the existing in-lieu sites in the Bonneville Pool. It should be noted that the original authorization in 1945 was limited to the Bonneville pool.

The District Court Decision on the CONFEDERATED TRIBES case filed in 1973 based on these negotiations recognized that the Federal Agencies had no authority to acquire additional in-lieu sites. The Decision noted that the agencies were recommending to OMB legislation for the acquisition of additional in-lieu fishing sites in the lower Columbia River and for construction of improvement on the existing sites. Such facilities would include access roads, boat ramps, sanitary fish cleaning, curing, and other ancillary facilities with electrical service and landscaping.

In order to fulfill the settlement which was negotiated in 1972, the Corps has constructed the additional improvements to the in-lieu sites. In addition, proposed legislation was submitted to Congress in 1974 under the signature of Secretary of the Army, Howard H. Callaway, to authorize the Secretary of the Army to acquire additional in-lieu sites at Bonneville, The Dalles, and John Day Dams. Such legislation, however, was never enacted. Therefore, we continue to have no authority to acquire additional sites.

The Corps of Engineers has continued to meet with the Bureau of Indian Affairs to discuss the activities and uses of Federal lands for Indian fishing in the lower Columbia River and the impact of fishing on other uses made of the Columbia River waterway. The Bureau of Indian Affairs approached the Corps of Engineers in the past several months to discuss the feasibility of acquiring and/or designating additional fishing sites in the lower Columbia River Basin from Bonneville Pool to McNary Dam in support of Indian fisheries.

The Bureau has identified a number of locations for additional in-lieu fishing sites. The Corps is preparing a Columbia River Regional Overview of the Bonneville, the Dalles, and John Day projects which will address, among other items, the issues involving existing Indian fishing sites and the need to identify other potential future sites. These studies should indicate whether additional sites for tribal fishing are feasible taking into consideration recreational and navigation use of the Columbia River system.

The Secretary of the Army has no enforcement authority under the Lacey Act. Thus, we will defer to the representatives of the Department of Justice in discussing the restrictions placed on fishing in the Columbia River under the Lacey Act and the terms of the Settlement Agreement under the case of UNITED STATES v. OREGON. However, to the extent that fishermen attempt to find access to the river through Federal project lands not available for that purpose or to impose their activities in the Federal recreation areas contrary to the rules and regulations established for the use of such areas, they are subject to citation by the Corps of Engineers for violations of Title 36, Code of Federal Regulations regulating the use and enjoyment of the Federal park and recreation areas. Although the Secretary of the Army has no law enforcement capability, per se, any violations of state or Federal law must be referred to local or state law enforcement agents.

In summary, the Corps exhausted all authority to acquire in-lieu sites under the 1945 River and Harbor Act, as amended, and has no authority to acquire additional sites at this time. We do, however, have expertise which could be used in conjunction with existing authorities to identify such sites and would be happy to work with the Committee and the Department of Interior in order to protect tribal fishing rights. This concludes my statement and I would by glad to answer any questions you may have.

We are unable to locate a copy of the 1939 agreement. However, based on the 1974 letter from the Secretary of the Army Callaway, and for purposes of this answer, the Corps accepts the fact that 400 acres were to be acquired for in-lieu fishing sites in the Bonneville Pool under the 1939 agreement. We should like to note, however, that the 1945 legislation authorizing acquisition of in-lieu sites in accordance with the 1939 agreement was specific to the Bonneville Pool and could not be used to provide sites in The Dalles or John Day Pools.

Congress initially authorized $50,000 to acquire the sites in the Bonneville Pool and subsequently raised that amount to $185,000. With the money available, the Corps acquired slightly more than forty acres at five sites. A sixth site proposed for purchase was foregone with the agreement of the Indian tribes in order to allow the remaining money to be used to improve facilities at four of the sites. The Corps has expended all funds appropriated for the acquisition of in-lieu sites in Bonneville Pool and therefore has no authority for acquisition of additional in-lieu sites in the Bonneville Pool.

In 1972, the Umatilla tribe sued the Corps on its proposal to fluctuate the Bonneville pool for power peaking purposes; Confederated Tribes of the Umatilla, et. v. Callaway, No. 72-211, (D OR 1973) (Callaway case). The Court's order reflects the agreements of the United States and the Umatillas: to protect three sites from inundation; to give 60 days advance notice of changes in the operating limits of the Bonneville, The Dalles, and John Day Pools; and to continue research and studies of the fishing and prepare an annual report for five years. A further agreement was entered into between the Corps and BIA to provide improved facilities at the five in-lieu sites. The findings of fact (not the order) in the case also indicates that the Corps would seek legislation for additional in-lieu sites. On March 13, 1974, the North Pacific Division Commander testified on the settlement of the case and the status of proposed legislation. The proposed legislation had been submitted to Congress, but not acted upon by the Congress. All other provisions of the Court's order are currently being complied with.

In order to compensate the Indian tribes for loss of fishing sites due to the construction of The Dalles Dam, the Corps entered into a series of agreements with the Indian tribes at the time of construction of the dam.

The agreements to compensate the tribes provide as follows:

| | |
|---|---|
| Yakima Tribe of Indians (17 Dec 54) | $15,019,640 |

(Note: the Yakimas reserved the right to pursue Claim

147 before the Indian Claims Commission. This Claim also addressed loss of fishing sites and was subsequently dismissed.)

| | |
|---|---|
| Nez Perce Tribe (19 Jul 56) | $ 2,800,000 |
| Confederated Tribes of the Warm Springs (10 Mar 53; 6 Nov 57) | $ 4,047,800 |
| Confederated Tribes of the Umatillas (10 Mar 53; 20 Nov 57) | $ 4,198,000 |

The authority to compensate the tribes for the loss of the sites flooded by The Dalles project is found in Public Law No. 453, 83rd Congress, 2nd Session, 1954; Public Law No. 153, 83rd Congress, 1st Session, 1954; and Public Law No 163, 84th Congress, 1st Session, 1955. Such compensation has been made in accordance with those laws, and we feel that no authority exists under those laws for acquisition of additional in-lieu sites.

The Magistrate's Findings and Recommendations in David Sohappy, Sr., et.al. v. Donald Hodel, et al., No. 86-715 JV (D OR 1987) address some of the issues now being raised on acquisition of additional in-lieu sites. The findings contain a recital of plaintiffs' allegations that the Government agreed to replace up to 37 fishing sites and the Government's defense that no enforceable agreements existed. Among other things, the Government argued that the terms of the statutes authorizing acquisition of the in-lieu sites had been fulfilled and the appropriations expended in a manner approved by the tribal governing bodies. The Court dismissed the Plaintiffs' claims as to additional in-lieu sites, finding that the Government had not waived its sovereign immunity as to plaintiffs' "contract claims" which would require the Government to acquire additional lands.

The plaintiffs also argued that under the decision in the Callaway case, the Government promised to obtain appropriations for additional in-lieu sites. The Government contended that it was to seek authorization and appropriation for additional sites and had fulfilled that obligation. The Court did not decide whether a series of agreements to acquire additional in-lieu sites existed because it did not need to. The Sohappy case is on appeal to the Ninth Circuit.

We have reviewed the data provided by the Columbia River Inter-Tribal Commission on the 30 in-lieu fishing sites. Because of the conceptual nature and scale of the drawings and maps, it is difficult to determine exact location, ownership, current use and limits of the 30 sites. Further coordination with BIA and the Indian Tribes will be necessary to establish more exact site boundaries. Given these factors, the matrix below provides only general information pertinent to use of the sites as in-lieu fishing sites.

All of the sites are currently dedicated to other uses which would require resolution prior to being considered as potential in-lieu fishing sites. Sites 1 through 6 are not under Federal fee ownership. Sites 7, 8, 9, 10, 12, 13, 21, 27 and 28 are Federal fee-owned but are improved and used bv the public as recreation areas. Of these sites, 7, 27 and 28 are under long-term outlease to State and local agencies for development and use as parks and recreation areas. Part of Site 12 is used for both gravel storage for future modification to the John Day Dam Project and is outleased to the Oregon Department of Fish and Wildlife for wildlife management. Site 14 is within the operational and security boundary of John Day Dam, and is considered to be unsafe for public access to the river. Sites 15, 17, 20, 23 and 24 are located within railroad and state highway rights-of-way and the Corps of Engineers has only flowage easements on these properties. Site 11 is partially located in a highway right-of way. The Corps only has a flowage easement on that portion of Site 11 in the right-of-way. Sites 16, 18, 19, 22, 25 and 26 are under Federal fee ownership and are located within the operations boundary of the projects for management and operation purposes, such as project pool fluctuations and debris collection. Site 29 is part of the Umatilla National Wildlife Refuge managed by the U.S. Fish and Wildlife Service. Parts of Sites 10, 20, and 30 are public port lands.

The uses listed above may not necessarily preclude any particular site for in-lieu fishing use; they do, however indicate potential land use tradeoffs. Prior to final designation of any sites and for a change in land use, it will be necessary to examine the projects under the Corps Master Planning process. This process is conducted by an interdisciplinary team and involves full public/agency involvement. This process ensures that all natural, cultural and man-made resources would be given thorough evaluation along with the needs of Native Americans, the BIA, another Federal, State and local agencies and the general public. This process permits the Corps to carry out the best interests of all concerned and provides appropriate authority for implementation.

The Corps will continue to review the sites proposed by the

Columbia River Inter-Tribal Commission in conjunction with the BIA and Indian tribes. Because of the multiple use nature of these sites, it is not possible at this time to make any commitment as to the use of these sites for additional in-lieu fishing sites.

| SITE NO | DESCRIPTION | FLOWAGE EASEMENT | FEE TITLE | OUTLEASED | PUBLIC PARK & ACCESS | RR/HWY RT OF WAY | NAT'L SCENIC AREA | PROJECT OPERATION USE | PUBLIC PORT USE |
|---|---|---|---|---|---|---|---|---|---|
| | BONNEVILLE | | | | | | | | |
| 1 | Stevenson | Y | | | | | Y | | |
| 2 | Gorton | Y | | | | | Y | | |
| 3 | Hood River | Y | | | | | Y | | |
| 4 | Bingen | Y | | | | | Y | | |
| 5 | Lyle | Y | | | | | Y | | |
| 6 | North Dalles Station | Y | | | | | Y | | |
| | THE DALLES | | | | | | | | |
| 7 | Horsethief Lake Park | | Y | Y | Y | | Y | | |
| 8 | Avery Recreation Site | | Y | | Y | | Y | | |
| 9 | Celilo Park | | Y | | Y | | Y | | |
| 10 | Biggs Junction R-A | Y | Y | | Y | | | | Y |
| 11 | Maryhill | Y | Y | | | Y | | | |
| 12 | Rufus (a) | | Y | Y | Y | | | Y | |
| 13 | Rufus (b) | | Y | | Y | | | | |
| | JOHN DAY | | | | | | | | |
| 14 | John Day Dam | | Y | | | | | Y | |
| 15 | Le Page Park | Y | | | | Y | | | |
| 16 | Goodnoe | | Y | | | | | Y | |
| 17 | Rock Creek | | Y | | | Y | | | |
| 18 | Blalock | | Y | | | | | Y | |
| 19 | Blalock Canyon | | Y | | | | | Y | |
| 20 | Arlington | Y | Y | | | Y | | | Y |
| 21 | Arlington/Roosevelt | | Y | | Y | | | | |
| 22 | Moonay | | Y | | | | | Y | |
| 23 | Pine Creek | | Y | | | Y | | | |
| 24 | Heppner Junction | Y | | | | Y | | | |
| 25 | Three Mile Canyon | | Y | | | | | Y | |
| 26 | Alder Creek | | Y | | | | | Y | |
| 27 | Crow Butte | | Y | Y | Y | | | | |
| 28 | Boardman | | Y | Y | Y | | | | |
| 29 | Irrigon | | Y | Y | | | | | |
| 30 | Plymouth | Y | | | | | | | |

# STATEMENT

OF

JAMES L. BYRNES
DEPUTY ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES DIVISION

BEFORE

THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

CONCERNING

COLUMBIA RIVER

ON

APRIL 19, 1988

Thank you, Mr. Chairman, for inviting the Department of Justice to appear before you today and testify concerning the Columbia River Management Plan and enforcement of fishery regulations on the Columbia River.

I am James L. Byrnes, Deputy Assistant Attorney General, Land and Natural Resources Division. The Division oversaw the negotiation and development of the Columbia River Management Plan on behalf of the federal agencies that are signatory to the Plan.

The Management Plan is the result of an historic four year effort by four treaty Indian tribes (the Nez Perce Tribe, the Umatilla Tribe, the Warm Springs Tribe, and the Yakima Indian Nation), the States of Oregon and Washington, and the United States to reach agreement on a plan to restore fish runs and establish management and enforcement procedures in the Columbia River Basin. It was negotiated in the context of United States v. Oregon, Case No. 68-513 MA (D.Ore.), litigation initiated twenty years ago by the United States and Indian tribal fishermen to protect Indian treaty fishing rights on the Columbia River. On March 11, 1988, the parties submitted the plan to the federal district court for its approval.

The Plan provides a framework within which the tribes and the states may exercise their regulatory powers in a coordinated and systematic manner to manage and enhance Columbia River fisheries. The two primary goals of the Plan are to ensure that the harvest of available fish in the River is shared fairly and equally between treaty Indian and non-Indian fisheries, and that the fishery resources are protected and enhanced through natural and artificial propagation.

Under the Plan, the four tribes which are parties to the agreement will be accorded the opportunity to harvest their treaty-secured shares of Columbia River fishery resources at their usual and accustomed fishing areas. Tribal members may engage in treaty fishing using such reasonable means as are compatible with conservation requirements and the rights of other fishermen to take, under applicable state or federal law, their share of those resources.

The Columbia River Tribes and the States of Washington and Oregon share regulatory authority over mainstem treaty Indian fisheries. The Plan does not alter the existing regulatory authority of the tribes and states. However, through establishment of technical advisory and policy committees, it is intended to promote complementary management strategies between tribal and state resources managers and to facilitate enforcement by ensuring compatibility of tribal and state law. To the extent possible, the tribes and the states will adopt agreed-upon permanent and seasonal fishing regulations.

The Plan expressly requires each tribe to enact permanent and seasonal regulations for each mainstem treaty Indian fishery. As expressed in the Plan, the United States and Oregon and Washington are firmly committed to the principle that the tribes should bear the primary responsibility for enforcing agreed-upon seasonal and permanent regulations applicable to mainstem treaty Indian fisheries. To this end, the tribes have agreed to commit, to the maximum extent possible, the police, prosecutorial, and judicial resources necessary to ensure compliance with tribal regulations governing the mainstem fisheries.

For their parts, the United States and Oregon and Washington have agreed in the Plan that they will negotiate with each tribe for agreements to refer to the tribes for prosecution under tribal law those tribal fishermen cited by state or federal enforcement officers for violating agreed-upon mainstem fishing regulations and to cooperate with tribal authorities in making evidence and testimony available in tribal court proceedings. Except as provided in any such future agreement, the United States and Oregon and Washington retain authority to prosecute violations of applicable laws or regulations in respective state or federal courts. Oregon and Washington have further agreed in the Plan that they will not prosecute any case which they have referred to tribal authorities unless there are no charges filed in tribal court.

Federal enforcement of fishing regulations on the Columbia River takes place principally under the auspices of the Lacey Act. First enacted in 1900 and most recently amended in 1981, the Act makes it a federal offense to engage in commercial activity with any fish or wildlife taken or possessed in violation of an underlying federal or tribal law or with fish or wildlife taken, possessed, transported or sold in violation of an underlying state law.

The Lacey Act does not, and was never intended to, increase the Federal role in wildlife management. Rather, it is a "Federal tool" which provides additional support for the "full range" of state, federal, and tribal laws protecting fish and wildlife resources by authorizing federal enforcement of those laws when federal jurisdictional prerequisites are satisfied.

In 1981, Congress added "Indian tribal laws" to the class of underlying wildlife protection laws incorporated by the Lacey Act. It did so in recognition of the "resource management responsibilities of Indian tribes on Indian tribal lands." Congress was careful, however, not to disrupt pre-existing rights or powers. The Act expressly disclaims any intent to repeal or modify Indian treaty rights or to enlarge or diminish the authority of any State or Indian tribe to regulate the activities of persons within Indian reservations.

The United States Fish and Wildlife Service and the National Marine Fisheries Service are charged with enforcing the provisions of the Lacey Act. In so doing, they are authorized to utilize, by agreement, the personnel, services, and facilities of any other federal or state agency or any Indian tribe. In certain instances, these federal law enforcement officers may also be cross-deputized to enforce state law as well.

In United States v. Sohappy, 770 F.2d 816, cert. denied, ___ U.S. ___ (1986), the United States Court of Appeals for the Ninth Circuit held that Congress expressly intended the Lacey Act to apply to Indians. It upheld the Lacey Act convictions of Indians who had violated underlying tribal and state fishery regulations. The court rejected defense arguments that the respective tribes had exclusive jurisdiction over enforcement of tribal fishing laws against Indians and that concurrent federal jurisdiction effectively destroyed tribal court and regulatory schemes. To the contrary, the court reasoned that Lacey Act enforcement supported tribal laws by authorizing federal penalties for violations of those laws. To the extent that Lacey Act prosecutions of treaty Indians were based upon underlying violations of state laws, the court held that the federal government must establish, just as the state would, that the underlying regulation is reasonable and necessary for conservation purposes.

Even though the Lacey Act provides concurrent jurisdiction to prosecute tribal law violations, the federal government exercises discretion when to initiate such prosecutions. Because tribal courts are courts of limited jurisdiction, the federal government has previously looked to such factors as the nature of the illegal conduct and the dollar amount involved to determine whether felony punishment is warranted. We anticipate that these would remain important factors in determining whether to refer a matter to tribal court.

As previously mentioned, the United States fully supports the concept contained in the Columbia River Management Plan that the tribes have the primary responsibility for enforcing tribal law with respect to their members. Along with ownership of natural resources comes the obligation to manage those resources responsibly and to prosecute those tribal members who violate laws designed to protect those resources. At the same time, it is important to have effective and meaningful enforcement of federal, state, and tribal regulations where a shared natural resource such as Columbia River salmon is involved.

The Department of Justice's involvement with in-lieu fishing sites has been rather limited. As you know, in 1945

Congress amended the River and Harbor Act to authorize the Secretary of War to acquire lands and provide facilities in Oregon and Washington to replace Indian fishing grounds which were submerged or destroyed by the Bonneville Dam construction in the 1930s. Such lands and facilities were to be transferred to the Secretary of the Interior for the use and benefit of Indians. Act of March 2, 1945, 59 Stat. 10, 22 (amended to appropriate $185,000 instead of $50,000 by the Act of June 8, 1955, 69 Stat. 85). The Department of the Interior promulgated regulations governing the use of these "in-lieu" fishing lands. See 25 C.F.R. Part 248. Therefore, the Department of Justice defers to the Army Corp of Engineers and Department of the Interior on the execution of this authority.

In 1984, the regulations regarding Columbia River in-lieu fishing lands were challenged in court. Sohappy v. Hodel, et al., Civ. No. 86-715-JU (D. Or.). Although the Indian plaintiffs admitted that they were living on Columbia River in-lieu fishing lands in violation of the regulations' prohibition on the erection, placement or maintenance of dwellings or structures except for those relating to processing fish, they argued that the regulation was invalid. On April 6, 1988, the District Court issued a judgment granting defendants' motion to dismiss and motion for summary judgment on their counterclaim. The court entered an injunction ordering the plaintiffs, among other things, to remove their permanent dwellings and structures and all other property, except camping facilities, fish-drying facilities and fishing platforms permitted under the regulations, from the Columbia River in-lieu sites. Plaintiffs have filed a notice of appeal in this case.

The Department of Justice looks forward to working with all resource managers and enforcement agencies that manage resources on the Columbia River. Together, we have a common responsibility to protect those resources for the use of present and future generations.

STATEMENT OF CLARK R. BAVIN, CHIEF, DIVISION OF LAW ENFORCEMENT, U.S. FISH AND WILDLIFE SERVICE, WASHINGTON, D.C., BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE.

APRIL 19, 1988

Thank you, Mr. Chairman, for inviting the U.S. Fish and Wildlife Service to appear before you today to testify concerning our policies on enforcement of the Lacey Act (16 U.S.C. 3371-8) based on violation of an Indian tribal law, which was made a predicate offense by the 1981 Amendments.

I am Clark R. Bavin, Chief of the Division of Law Enforcement for the U.S. Fish and Wildlife Service and as such am principal advisor to the Director on all matters relating to enforcement of laws under the jurisdiction of the Service.

The Lacey Act was first enacted in 1900 and has been amended several times. The U.S. Fish and Wildlife Service and its predecessor agencies have had enforcement responsibilities under this law for the past 88 years. During that time we have had considerable experience with the issue of multiple jurisdictions. It is a long established principle of law that the Fifth Amendment to the United States Constitution, which prohibits a person from being put in jeopardy twice for the same act, applies only to one sovereign. It is not considered double jeopardy to be prosecuted in more than one jurisdiction for the same act which may be a crime under the laws of each separate sovereign.

Notwithstanding this legal precedent, the Service has long had a policy under the doctrine of fairness to refer matters for consideration of both Federal and State prosecutors only in special circumstances. Our policy prohibits field offices from directly referring a matter to both Federal and State prosecutors without prior clearance from the Washington Office. Approval might be granted, for example, in situations where cases have been prosecuted in State Court and we feel that there has been a gross miscarriage of justice or for some other reason the Federal interest has not been sufficiently protected. Of course, the ultimate decision of whether prosecution will take place in the Federal system rests with the United States Attorney and the Department of Justice.

In relation to Indians, we have a similar situation. It is somewhat different in that the Department of the Interior has an interest in protecting and fostering the religious and cultural activities and interests of Indian peoples, and, at the same time, to conserve and protect wildlife resources. In addition, the law relating to Indian hunting and fishing rights is very complicated. For many years, even prior to the 1981 Amendments to the Lacey Act, we have had a policy that prohibits our field offices from referring any violation of Federal law to State or Federal prosecutors where they have reason to believe that an American Indian is the subject of the investigation. In such situations the case must be referred to the Service's law enforcement headquarters office. We then consult with the Office of the Solicitor, which must review the facts and make a determination that no apparent constitutional principles or Departmental policy would be breached if the case were referred to either State or Federal prosecutors.

If a tribal court assumes jurisdiction, a fair trial is held on the merits, and appropriate penalties assessed, we probably would not also seek prosecution under the Lacey Act in Federal Court. The only time in which such a case would be referred to the United States Attorney for prosecution would be where we believe the Federal interest has not been protected.

When Lacey Act charges are filed against Indians, most, if not all, involve illegal commercialization of fish or wildlife illegally taken under either tribal or State law. Where both tribal and State law prohibit the sale of fish a trial of the Indian in tribal court may be unable to address the seriousness of the offense. Furthermore, if the penalties assessed against the Indians are small compared to non-Indians involved in the same violations, the Federal interests in deterring further violations, protecting the resources, and safeguarding State and tribal rights may not be served.

Each case must be reviewed on the merits and it is infeasible to make general statements on which jurisdiction would best serve justice and protect the resource.

I would also like to point out that there have been a number of forfeiture actions under the Lacey Act where non-Indians have violated tribal laws. This is specifically designed to assist the tribes' protection of their resources.

I believe, Mr. Chairman, that this statement answers the principal questions on which you requested our views and I will be happy to attempt to answer any questions.

# STATEMENT OF
# MORRIS M. PALLOZZI
# DIRECTOR, OFFICE OF ENFORCEMENT
# NATIONAL MARINE FISHERIES SERVICE
# NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
# U.S. DEPARTMENT OF COMMERCE

**BEFORE THE**

**SELECT COMMITTEE ON INDIAN AFFAIRS**
**UNITED STATES SENATE**

**APRIL 19, 1988**

Mr. Chairman and Members of the Committee:

My name is Morris M. Pallozzi, and I am the Director of the Office of Enforcement for the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA). I am responsible to the Assistant Administrator for Fisheries for all NMFS law enforcement matters. Accompanying me is Margaret Frailey, NOAA's Assistant General Counsel for Enforcement and Litigation. We appreciate this opportunity to discuss NMFS law enforcement activities on the mainstem of the Columbia River, the application of the Lacey Act to Indian fishermen, and the effect of the proposed settlement agreement in United States v. Oregon on future Lacey Act prosecutions. Since NMFS has no oversight responsibilities for "in-lieu" fishing sites, we have no comments to offer on that subject.

Since its creation in 1970, NMFS has carried out Federal law enforcement responsibilities relating to the commercial and recreational harvest of this country's fisheries resources by foreign and domestic fishermen.

It has been one of the lead agencies in carrying out the responsibilities of the United States under a series of treaties negotiated with various Northwest Indian tribes in the 1850's. With respect to the Columbia River, NMFS has diligently pursued the development of a cooperative, multi-jurisdictional fisheries enforcement effort which recognizes the sovereignty of four treaty tribes, three States, and the Federal Government, while at the same time maintaining the regulatory schemes of each. These cooperative efforts are carried out through the Columbia River Law Enforcement Committee.

The Committee is composed of the fisheries and game enforcement arms of the Washington Department of Fisheries, the Washington Department of Wildlife, the Oregon State Police, the Idaho Department of Fish and Game, the U.S. Fish and Wildlife Service, the Columbia River Indian tribes, and NMFS. The mission and purpose of the Committee is to facilitate the exchange of enforcement information, and to coordinate enforcement efforts on the Columbia River, especially at times during which anadromous fish runs are most vulnerable to illegal fishing activity. From the inception, a major goal of the Committee has been to assist in establishing and maintaining a professional Columbia River inter-tribal fisheries enforcement system, enforcing a uniform code of laws through a tribal court system. In order for the Columbia

River inter-tribal enforcement system to reach its full potential, NMFS, the Washington Department of Fisheries, and the Oregon State Police, at the request of the Bureau of Indian Affairs in 1982, established a Fisheries Enforcement Training Program for Bureau and tribal officers. Additionally, NMFS has coordinated training for inter-tribal boat operators at the Federal Law Enforcement Training Center in Glynco, Georgia. We will continue to support the Columbia River inter-tribal enforcement system to achieve that level of cooperative enforcement effort which now exists in the coastal and Puget Sound areas of the State of Washington. That effort involves 20 Indian tribes, the Washington Department of Fisheries, and the NMFS in coordination with the Northwest Indian Fish Commission.

The intent of the parties to the Columbia River Management Plan negotiated as part of the proposed settlement in United States v. Oregon was to formalize the procedure of referring cases involving violation of tribal regulations by tribal fishermen to tribal court. We have long followed this procedure on an informal basis in the Puget Sound and coastal areas of Washington State.

However, in negotiating the Columbia River Management Plan, the United States was cognizant of the purpose of the 1981 Amendments to the Lacey Act to support and strengthen tribal laws protecting fish and wildlife. Accordingly, while the United States favors referral of appropriate cases involving violations of tribal law to tribal court, there are important reasons to retain Federal law enforcement and prosecutorial authority under the Lacey Act. For example, tribal courts are quite limited as to the magnitude of penalties imposed for serious resource violations. The Lacey Act, applicable to all citizens, was specifically designed to deal with such violations, making them felonies prosecutable in Federal court. In addition, Indian tribes have jurisdiction only over their own members. Prosecution of non-member wildlife violations is appropriately handled under the Lacey Act.

I will conclude by stating that the Lacey Act Amendments of 1981 have proven to be one of the most powerful and effective tools NMFS possesses to carry out its congressionally mandated responsibility to protect this Nation's fisheries resources. It is certainly the most effective tool in implementing these decisions guaranteeing and protecting the reserved treaty fishing rights of Pacific Northwest Indian tribes.

The Northwest Indian Fisheries Commission has, through effective leadership, developed a cooperative enforcement system for many of the major tribes in their jurisdiction (Attachment I). Noteworthy is the present system involving Fraser River enforcement. Included are cross deputization agreements, guidelines for enforcement, enforcement contacts with each of the various enforcement agencies having jurisdiction, and agency schedules for primary patrol coordination responsibilities for time and area coverage. Joint patrol efforts involving tribal, Federal and state officers are commonplace throughout the fishing seasons.

Violators, treaty or non-treaty, are referred to their respective jurisdictions for prosecution. Cases involving commercial quantities of fish illegally sold or transported in interstate commerce are referred to the U.S. Attorney for disposition. Arrests are limited to cases involving felonious assault on a Federal agent. These practices also apply to violations of tribal law on the Columbia River.

# ATTACHMENT 1

## Brochure of

## Northwest Indian Fisheries Commission

Another important part of tribal enforcement is intertribal coordination. Because the tribes are committed to the effective enforcement of fisheries management regulations and to the protection of the fish resource and the environment, they make every effort to cooperate with local, state, national and international fisheries management and enforcement agencies.

The tribes also created the Northwest Indian Fisheries Commission to help coordinate intertribal, as well as Indian/non-Indian enforcement and other fisheries management efforts.

Through efforts such as intertribal coordination, the tribes hope to assure that the great Pacific Northwest fish resource will survive to benefit future generations.

*Indian Tribes Working for Tomorrow's Fish Today*

Northwest Indian Fisheries Commission
6730 Martin Way East
Olympia, WA 98506
(206) 438-1180

# TRIBAL ENFORCEMENT

*Quality Officers*
*Doing an Important*
*Job Well*

Tribal police are among the best trained rural police officers in the world. They are well trained in the task of maintaining law and order and enforcing fishing regulations, both in reservation and usual and accustomed waters.

Tribal police are particularly adept at enforcement search and rescue operations in the mountains, forests, rivers and other sparsely populated areas and work consistently in coordination with off-reservation enforcement agencies.

Tribal officers are trained in federal or state police academies. Some attend special fisheries enforcement schools and all receive valuable in-field training on the reservations. The tribes maintain and operate their own judicial systems as well, which comprise an important part of the overall enforcement program.

## Intertribal Coordination

B. J. Whitener

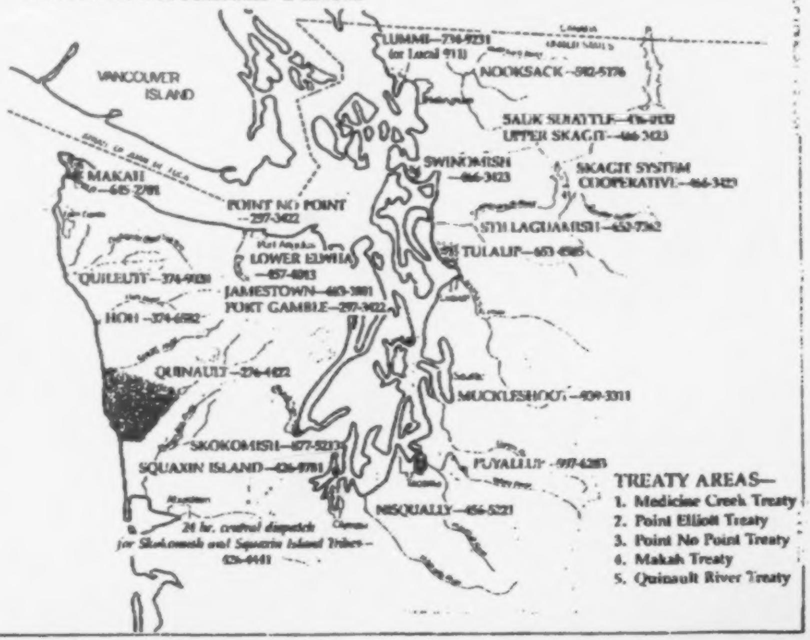
Among other services, the Northwest Indian Fisheries Commission assists the tribes in enforcement and fisherman identification, under the direction of Intertribal Coordinator B. J. Whitener. As a graduate of the U.S. Bureau of Indian Affairs' Police Academy, former chief of police for the Squaxin Island Tribe, and seasoned police officer, Whitener is well equipped for these functions.

Anyone wishing to report possible fishing violations or to arrange for a tribal enforcement speaker for a club or organization is encouraged to contact the appropriate tribal office (see map below).

For more information, contact your nearest tribe, or B. J. Whitener, Intertribal Coordinator, Northwest Indian Fisheries Commission, at (206) 438-1180.

NATEO, or the Northwest Association of Tribal Enforcement Officers, is a professional organization created to enhance effective communication and promote education and training among tribal enforcement agencies in the Pacific Northwest. To learn more about NATEO, call Robert L. Gouin, NATEO President and Chief of Police, Squaxin Island Tribe, (206) 426-9781, Ext. 27, or Vice President R. Bruce Haley, Law and Order Administrator for the Lummi Tribe, (206) 734-9231.

## Tribal Enforcement Offices


LUMMI—734-9231
(or Local 911)
NOOKSACK—592-5176
VANCOUVER ISLAND
SAUK SUIATTLE—436-0132
UPPER SKAGIT—466-3423
SWINOMISH—466-3423
SKAGIT SYSTEM COOPERATIVE—466-3423
MAKAH—645-2701
POINT NO POINT—297-3422
STILLAGUAMISH—652-7362
TULALIP—653-4585
LOWER ELWHA—457-4013
QUILEUTE—374-9020
JAMESTOWN—683-3801
PORT GAMBLE—297-3422
HOH—374-6582
QUINAULT—276-4422
MUCKLESHOOT—939-3311
SKOKOMISH—877-5213
SQUAXIN ISLAND—426-9781
PUYALLUP—597-6200
NISQUALLY—456-5221
24 hr. central dispatch for Skokomish and Squaxin Island Tribes—426-4441
TREATY AREAS—
1. Medicine Creek Treaty
2. Point Elliott Treaty
3. Point No Point Treaty
4. Makah Treaty
5. Quinault River Treaty

In April of 1981 the National Marine Fisheries Service began a covert investigation in an attempt to obtain and document information necessary to measure the quantity of salmon and steelhead illegally taken from the Columbia River, and in particular to identify the illegal commercial markets for those fish. The investigation included the active participation of the Washington State Patrol, the Washington Department of Fisheries and the Oregon State Police.

Phase I of the investigation documented the illegal taking and sale of more than 53 tons of salmon and steelhead from the river between April, 1981, and June, 1982. During the 14-month period, NMFS agents spent 49 days on the river engaged in buying illegal fish. However, as disclosed in Phase II of the investigation, they were not the only buyers of illegal fish on the river. Phase II documented the illegal taking and sale of an additional 65 tons of salmon and steelhead during 1981-1982.

Phase I of the investigation ended on June 17, 1982, when a team of National Marine Fisheries Service agents and officers from the Washington Department of Fisheries simultaneously served Federal search warrants at Season Fish Company in Kelso, and at Cook's Landing, Washington.

Those Federal District Court search warrants directed the NMFS to seize and bring before the court nine vehicles, all electronic surveillance equipment and all fish-related business records and receipts to be found in five buildings and two trailer homes located at a multi-acre site in Skamania County, Washington, known as Cook's Landing.

Cook's Landing had in the past been the scene of violent confrontations between the inhabitants and law enforcement officers. It was also a site from which patrol vessels had come under high powered rifle fire. The major responsibility of the NMFS in carrying out the orders of the U.S. District Court was to provide for the safety of the inhabitants and for the agents on scene. Because of prior planning, proper training and a sufficient number of agents to carry out assigned duties, the warrants were served without serious incident. Evidence was seized, including gillnets illegally set at the site and a tote load of closed-season salmon. One person was arrested for assault. The entire operation was witnessed by the Skamania County Sheriff and an Assistant United States Attorney. At Kelso, the business records of Season Fish Company were seized, leading us into Phase II of our investigation.

We uncovered schemes including failing to report transactions, reporting illegal river fish as ocean troll caught salmon, misreporting species, and embossing blank fish tickets for use at a later date. Most of the illegal fish were canned, including several tons of illegal steelhead, which were labeled as medium red salmon, placed in interstate commerce and ending up on grocery shelves from coast to coast. But for the use of undercover techniques, these felonies would never have been documented.

Based on the evidence presented from Phase I, a Federal Grand Jury sitting in Seattle, Washington, subsequently indicted David Sohappy Sr. and 18 other individuals for numerous felony violations of the Lacey Act. The evidence from Phase II resulted in a Grand Jury indictment charging the non-Indian manager of Season Fish Company with numerous felony violations of the Lacey Act and with mail fraud.

During the "SAM-SCAM" investigation, 96 people were identified as involved in criminal acts: 73 were treaty Indians, and 23 were non-treaty citizens. Of the 23 non-treaty citizens, five were not prosecuted. Of the 73 treaty Indians referred for prosecution, at least 21 were never prosecuted. Early in 1983, prior to the trial in Los Angeles, California, communications with the Yakima Indian Nation's prosecutor revealed that the Yakima tribal council had decided not to proceed with any of the cases referred to them for prosecution in 1982. As well, no cases referred to the Warm Spring Tribe in 1982 proceeded to prosecution. The Yakima Indian Nation did initiate prosecution against five subjects (Sohappy Sr., Sohappy Jr., McConnville, Yocash and Slockish) in 1987.

The Yakima Tribal Police as well as the Warm Springs Police were aware of much of the illegal fishing activity taking place on the Columbia River. Other than a lack of jurisdiction over members from other tribes, we do not know why they took no enforcement action. Tribal fisheries patrols during closed fishing periods were virtually non-existent, as was a system of accountability for ceremonial fish.

The Warm Springs Chief of Police in a February 1982 article was quoted: "Cook's Landing is no man's land, no one goes in there. Indian Officers don't go in there. People there are a different variety. They know how to use force." According to Chief Sanders, he observed fish buyers in boats on the river buying from ceremonial fishermen. Sanders claimed that, if poachers were not stopped, salmon would only be seen in aquariums (Attachment II).

The Oregon State Police and both the Washington Departments of Fisheries and Game were aware of the illegal fishing. However, their Federally augmented joint patrol efforts were ineffective, in large part due to the monitoring of their police radio traffic by the poachers at Cook's Landing.

Tribal officials were not advised of the undercover operation. We had received information from confidential sources within the tribes that some council members were involved in or approved illegal fishing activities. This was later substantiated by the admissions, under oath, of Levi George, a Yakima Chief and tribal councilman for fisheries, during cross examination by the Assistant U.S. Attorney (Attachment III, p. 965 & 966).

# ATTACHMENT 1I

## Newspaper Articles

from
"THE COLUMBIAN"

*First in a series*

A 11 - (1)

A

# River salmon threatened by high-stakes poaching

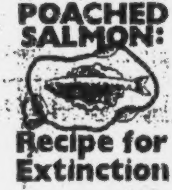
Fish - Salmon x (Crime - Poaching)

- The last fish? Page 1

By BILL DIETRICH
The Columbian

If a known group of organized thieves annually embezzled hundreds of thousands of dollars from government coffers in Washington and Oregon, one would expect a public outcry and police crackdowns.

Just such a theft occurs on the Columbia River each year. Yet it is frequently ignored by the public, condoned by some fishermen, inadequately policed, unenergetically prosecuted, and punished with light sentences.



Maintaining Columbia River salmon runs costs the public more than $16 million annually in federal and state taxes, fishing licenses and electric rate surcharges, according to the Columbia River Fisheries Council.

FEB 7 1982

Thousands of the resulting fish, plus sturgeon and steelhead, are stolen each year — illegally netted, clubbed or snagged.

Big money is at stake. At up to $3.50 a pound wholesale, a single stolen adult chinook salmon can bring as much as $100.

How bad is poaching? Because the salmon are hidden from human eyes until caught or they go over a fish ladder, there are no reliable numbers on how many are illegally caught in the Columbia.

Yet authorities fear illegal fishing might annihilate at least one salmon run, the fall wild chinook that spawn at Priest Rapids near Hanford, the last free-flowing part of the river.

In 1980, 30,000 natural spawning fall chinook disappeared when swimming between the fish ladders at Bonneville and John Day dams. They were not reported as commercial catches, did not show up at hatcheries, and did not swim up tributaries.

Some fishermen contend they were killed by dam turbines. Washington fisheries biologist Don McIsaac of Vancouver said most scientists think it is more likely the majority were caught illegally.

Last fall, the problem worsened: 33,000 wild chinook and 20,000 hatchery fish ended up missing.

"Our needed spawning escapement was not realized," said McIsaac. "We got half of what was needed to perpetuate runs at maximum sustained yield."

State biologists were concerned enough to ask for a halt to river fishing on the fall run in 1981, but the courts awarded the Indian tribes eight days. Biologists may seek a

And, in a science-fiction-like twist, they hope to implant some fish with radio transceivers so they can be tracked while swimming upstream from Bonneville to John Day. Then scientists could say with certainty whether it is poaching or dams that cause the fish to disappear.

Even without thousands of fish mysteriously missing, undercover investigations and arrests have consistently forced authorities to increase their estimates of illegal fishing.

"It's a pretty widespread problem," said one state fisheries officer, Joe Salte of Cathlamet. "I think it's severe enough that it's affecting the fish runs."

Simple arithmetic is one reason agents are concerned. Saturation patrols in 1981 brought five to six arrests each of four to five consecutive nights at Bonneville Pool, recalled Oregon State Police Sgt. Joe Schwab. Forty-seven illegal nets were confiscated during 1981 in the vicinity of The Dalles. About 200 nets were confiscated on the river last year.

Ed Wickersham, a U.S. Fish and Wildlife agent who lives in Vancouver, said one illegal floater net near Spring Creek hatchery above Bonneville was found so full of fish it had been dragged underwater. In 1979, two illegal nets alone yielded 2,500 pounds of chinook salmon; on Sept. 6, 1980, four illegal nets were found containing 4,138 pounds of chinook.

"It wouldn't be uncommon to catch 100 fish in a single night," Salte said. That number easily could be worth $5,000.

Veteran poacher Marvin Toiva, now in prison, said up to $10,000 worth can be caught in one night during the peak of a run.

One Portland fish broker offered to purchase any amount up to 10,000 pounds. He was one of three charged recently with agreeing to buy illegal fish from an agent posing as a seller.

James Lithgow pleaded guilty in December and paid a $1,000 fine. His Lithgow Bros. Inc. fish brokerage was fined an additional $5,000.

Carlson Seafood Inc. pleaded guilty and was fined $4,000. Owner Craig Carlson was fined an additional $1,000.

Action is pending against Joe Jaha of Sea Sands brokerage.

Those cases were prosecuted under Oregon's felony law. Under Washington law, the crime is at worst a gross misdemeanor, with a fine up to $5,000 and a penalty of a year in jail. In practice, most fines remain well below $1,000 and jail time is given only to repeat offenders.

Fisheries agents suspect many area restaurants, including some in Clark County, are knowingly or unknowingly buying and serving stolen fish. Arrests, however,

Restaurant owners interviewed denied any direct involvement, saying they buy their fish through established fish brokers. Some Vancouver chefs said they have been offered illegal fish, or know the trade goes on in the metropolitan area, but denied participating in it.

Tracing illegal fish to the retail market is difficult. Most salmon served or sold outside regular fishing seasons has been legally frozen and stored. If fish is caught illegally for black-market sale, it need only be frozen to prevent enforcement officers from determining when it was caught.

Even if fish is sold fresh out of local season, sellers often point to other legal salmon seasons elsewhere. For example, one Vancouver fish market recently sold fresh chinook during the locally closed season. It was obtained through a Portland broker, who said the fish came from Puget Sound. There is a legal salmon troll fishery for chinook salmon in the Strait of Juan de Fuca almost year around.

The Columbia River experiences spring, summer and fall runs of salmon, but because the number returning to the river to spawn continues to decline, river commercial fishing has been sharply reduced.

Under a compact agreed to between the states of Washington and Oregon and the Yakima, Warm Springs, Umatilla and Nez Perce Indian tribes, about one-third of the fish destined to migrate upriver from Bonneville Dam are reserved to lay eggs for future runs. Of the remainder, Indians are supposed to get 40 percent of the spring chinook and 60 percent of the fall chinook, with the rest for non-Indians. However, the tribe's recorded catch often lags behind those percentages.

FEB 7 1982

One winter commercial fishing season is planned for later this month and March, agreed to by the states and tribes. A brief fall fishery may be set later. Tribal fishing seasons are different from those of non-Indians to try to ensure the tribes catch the percentage they are allowed, but for both groups, legal seasons have become short.

Indian tribes also are allowed to set their own special seasons for ceremonial fishing to provide fish for traditional religious or tribal gatherings. The catch is not supposed to exceed the number needed for the ceremony, and the recorded number of fish caught for ceremonial purposes is small.

But fisheries officers believe large numbers of unrecorded surplus fish are caught on out-of-season ceremonial permits, which tribes grant their fishermen, and are sold on the black market.

Fisheries agents say more than crime and money is at stake in the salmon scam. A distinct part of the Northwest's heritage also is threatened.

A II ②

nless more is done, in our lifetime we ee the extinction of the run," said Jeff ders, police chief of the Warm Springs an Reservation east of Mount Hood. u will have to go to an aquarium to see mon."

# POACHED SALMON: Recipe for Extinction

## Illegal fishing a way of life for some

Fish - Salmon

Price of poaching, Page 7

By BILL DIETRICH
The Columbian

Who will catch the last salmon in the Columbia River? An Indian? A white gillnetter? A sportsman?

A thief, most likely. You might eat his catch at your favorite local restaurant.

As runs dwindle, seasons shorten and the value of salmon climbs to as much as $100 a fish, the attraction of illegal fishing grows. For some fishermen, poaching has become a way of life.

FEB 7 1982

"It's better than robbing a bank," said a state fisheries agent, Joe Salte of Cathlamet. "If you go out and poach for a season, you can make maybe $40,000 or $50,000."

If caught in Washington, the fine for a first offender is sometimes less than the wholesale price of a night's catch. Jail time is unlikely.

Yet the lawbreakers are stealing from a Columbia River fish run that will cost the public more than $18 million to maintain this year.

One Skamokawa man amassed 13 fishing violations, three resisting-arrest charges and one escape in just four years. In Skamania County, Indians fish illegally almost every day at Cook's Landing, east of Stevenson.

Five state and federal agencies and four Indian tribes with enforcement powers are attempting to crack down.

In 1979, a Skamania County grandmother was sent to prison in Oregon for selling an estimated $390,000 of illegal fish in slightly more than three months.

An undercover sting operation last year led to charges of illegal fish-buying against three Portland brokers. Two have pleaded guilty.

Most penalties are not severe. While Oregon has made illegal commercial fishing a felony, Washington's Legislature voted in 1979 to keep it a misdemeanor. Some commercial fisherman lobbied against making it a harsher crime.

Enforcement remains understaffed and uncoordinated, most officials agree.

"I think we're barely scratching the surface," said Salte. "There's no question we need more people."

Washington and Oregon officials are belatedly recognizing that as salmon runs decline, poaching may be serious enough to push the fish to extinction.

Half the fall chinook wild run disappeared between Bonneville and John Day dams in 1980 and 1981. Biologists fear poaching may be the cause.

Based on undercover investigations, most fisheries agents believe poaching earns hundreds of thousands of dollars a year. Some guesses run more than $1 million.

Some fish are sold to restaurants and brokers in this metropolitan area. Others have been flown to California or the East Coast.

One 33-year-old poacher now in prison boasts of making more than $1 million from fish caught illegally in the lower Columbia River. Upriver, a minority of Indians are believed abusing ceremonial fishing privileges to poach. In tributary streams, so-called sportsmen have been caught snagging and clubbing spawning fish for later sale.

Each group tends to point accusingly at the other as the real culprit.

"Uppermost should be the preservation of the resource, but too many fishermen of both races look on it as who's going to catch the last salmon in the Columbia River," said Jeff Sanders, police chief of Oregon's Warm Springs Tribe.

In a series beginning today, The Columbian looks at poaching in the Columbia River from John Day Dam to Wahkiakum County.

H II (3)

# Wily poachers prove elusive to fishery agents

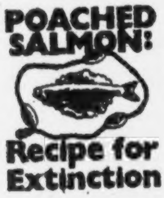
[illegible]-Salmon x (Crime-Poaching)

By BILL DIETRICH
The Columbian

FEB 8 1982

Law enforcement agencies trying to stop illegal Columbia River fishing are undermanned, underequipped and ill-coordinated.

That is the picture that emerges from interviews with frustrated officers. Annual arrests on the river have decreased from 175 in 1977 to 107 in 1981: Oregon State Police Lt. Bob Lane, who gathers those statistics for the Columbia River Law Enforcement Council, thinks the drop indicates greater skill by poachers rather than any decline in illegal fishing.



The council, made up of five non-Indian agencies and an Indian representative, has been meeting monthly the past two years to coordinate enforcement. New undercover investigative techniques have been developed.

These actions would make it appear that fish enforcement on the Columbia is adequate. Three state and two federal agencies can muster some 53 fish and game officers. Indian tribes can add still more.

But realistically, coordination remains more the exception than the rule. Said U.S. Fish and Wildlife agent Ed Wickersham: "We apprehend maybe 2 or 5 percent of the illegal fishing that goes on. We can intuitively say it's a hell of a problem."

Those agents are scattered along nearly 300 miles of the Columbia River from its mouth to McNary Dam, and on hundreds of miles of tributary streams. They often are responsible for game enforcement as well.

Frequently they wind up working alone in search of sunken nets, illegal fish buyers and hundreds of law-flouting sportsmen

Lt. Curt Ruecker of the Oregon State Police said the information and enforcement network needed to shut poaching down is not in place yet.

"The illegal fishermen have radio communications that make us envious," Ruecker said. "They read our messages on our scanners, watch our houses, tail our cars. If I was to take a marked boat and launch it at Cascade Locks, within 15 minutes every fisherman within 30 miles would know I was out there and which way I was going."

In The Dalles, said Oregon State Police Sgt. Joe Schwab, poachers have parked outside the state police office to keep track of officers' comings and goings.

Poachers are not easy to catch. The typical method is a nighttime river patrol in search of a sunken net. Once the net is found, agents must stay close by for hours or days in hopes the owner will return to pull it in. If he does, officers must hope they have enough manpower present to cut off his escape.

"There is an inability of agencies to work as a team," observed Warm Springs Tribal Police Chief Jeff Sanders. "The fish are the loser. I've been a policeman here 20 years, and this summer was the first time I had ever been contacted by a state or federal agency to share information on illegal fishing. If we could combine all our resources, we would have enough surveillance."

Even when agents catch illegal fishermen, they run into frustration. Court penalties are frequently just a few hundred dollars.

Politics also intervene. After Oregon made illegal salmon fishing for profit a felony instead of a misdemeanor, Washington's Department of Fisheries proposed the same change in 1979.

Trollers, crabbers and gillnetters lobbied against it, recalled Assistant Fisheries Director Ed Manary. At the time, he said, some fishermen were engaged in protest fishing on Puget Sound over Indian fishing rights and did not want felony convictions on their records.

The proposal was rejected in favor of making illegal fishing a gross misdemeanor and increasing the maximum fine from $1,000 to $5,000.

The disparity in state law has driven poaching to the Washington side of the river. The result? Through last October, Washington and Oregon devoted almost identical man-hours and numbers of patrols to the illegal fish problem, but so many more fishermen were on the Washington side that this state had 80 arrests to Oregon's 27. Washington agents seized 127 nets, to 52 in Oregon.

Tribal politics also intervene. The Yakima, Warm Springs, Umatilla and Nez Perce treaty tribes on the Columbia River have been asked to form an intertribal fish enforcement force; the Yakima have declined.

"Like so many other organizations in the world, tribes do not get along together," Sanders said.

At present, a policeman from one tribe won't arrest a member of another tribe because of uncertain jurisdiction. That means tribal game and fish officers will ignore violations by members of other tribes.

"If I arrest a Yakima or Umatilla," said Warm Springs chief Sanders, "where would I take him to court? Where would I charge him?"

Even fines for Warm Springs violators levied in tribal court are typically light — $100 to $150, Sanders said. Each tribe sets its own penalties. Compared to the value of the fish involved, "That's not much deterrence." The maximum Warm Springs tribal fine is $500.

Improvement may be coming. Tim Wapato, a retired Los Angeles police officer working to get the three-tribe police force started, hopes to obtain financing from the U.S. Interior Department this year.

The Oregon State Police hopes to obtain additional fish enforcement money from the Northwest Power Bill, which dictates that some dollars from sales of electricity be used to increase Columbia River fish runs.

Officers also are focusing more attention on fish buyers, hoping to choke off demand for illegal fish. Some brokers have been caught, and further stings are planned.

Enforcement teams face a formidable task.

"I know illegal fishing goes on in all the creeks and streams, especially with a recession going," said Tom James of Newhalem, Ore.

James is a former commercial fisherman who said he sometimes fished illegally. "Just about every fisherman has at one time or another fished illegally. Just look at the odds of what you get by doing it and what you will lose by getting caught."

A II ④

*Third in a series*

Fish - Salmon x Crime-poaching

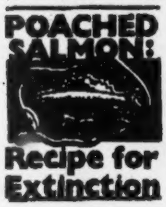
# Stubborn family eludes law's net

By **BILL DIETRICH**
The Columbian

Call it SoHappy's Last Stand. It is one fishing war the Indians appear to be winning.

FEB 9 1982

Their victory site is Cook's Landing, a rocky outcrop that extends into Bonneville Pool about 15 miles east of Stevenson. Every day, in or out of season, fish nets are set there by some of the six Indian families that have built permanent houses and shacks on Bureau of Indian Affairs property.



"Cook's Landing is no man's land," said Jeff Sanders, Warm Springs Indian Reservation police chief. "No one goes in there. The state doesn't go in there. Indian officers don't go in there. People there are of a different variety. They know how to use force."

David SoHappy Sr., 56, is the Yakima Indian who has successfully defied repeated attempts by authorities to make his family move or cease fishing. SoHappy's allegiance is to Indian fishing tradition, not what he regards as white fish laws.

He has been cited and has had his nets seized by officers. But at least two cases against his band have been dismissed in Skamania County for want of prosecution. He is appealing one $550 fine.

He vows he will never leave Cook's Landing.

"The Indians have always fished here," he said. "This is our subsistence."

"They flaunt the law in our face," said Sgt. Joe Schwab, Oregon State Police fish enforcement officer in The Dalles. "They firmly believe in their right to fish. We've pulled nets off the dock and they threw rocks at us. One time we were shot at. We've been verbally harassed a lot of times.

"We stay away from Cook's. It's not worth it. I don't want any of my officers getting shot over a fish."

SoHappy has fished on and off since he was 4. He worked in a lumber mill pond up until 1966, then gave it up.

"I was making good money, but I was in debt all the time when I was working. I said to heck with working, I'm not going to work no more."

He came to Cook's Landing, built a shelter on the federal land, and has lived off fishing ever since.

"Lots of Indians eat fish that otherwise wouldn't be," he said of his livelihood. He regularly takes some of his catch to tribal gatherings in Washington and Oregon.

SoHappy is an Indian mystic who lives where he wants, fishes where he wants, and ignores tribal agreements with state and federal agencies to control the fish catch.

"That's just a way to erode our rights," he maintains.

SoHappy's Feather religion relies on salmon for its ceremonies. He claims to have healed fellow Indians in medicine-man ceremonies that incorporate the fish.

Destroy the fish runs? The Indians fished salmon for thousands of years without destroying them, SoHappy argues. White society, with its dams and fish wheels and pollution, has managed to choke off the runs in a century, he said.

"If Indians are allowed to keep fishing, the fish will come back," he insists. "It is when Indians stop fishing that the fish will no longer come."

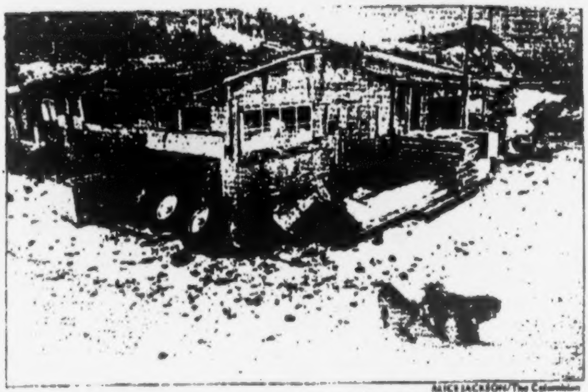
Adds neighboring Yakima Indian Randy Settler, whose mother, Mary Settler, was imprisoned for illegally fish brokering: "People can blame the Indians all they want, but the fish are not going to come back because of dams, logging and water for irrigation. When John Day Dam came in, the fish went away."

SoHappy freely admits to firing warning shots, ramming patrol cars, throwing rocks, and committing similar acts of defiance toward both white and Indian officers to make clear he has no intention of surrendering what he sees as an aboriginal right.

There are four Indian tribes with treaty rights to fish on the upper Columbia: the Yakima, Warm Springs, Umatilla and Nez Perce. While a majority agree to limited

cont.

⑤



ALICE JACKSON/The Columbian

David SoHappy's home on Bureau of Indian Affairs land at Cook's Landing.

seasons to preserve fish runs, a vocal minority see themselves at the shrinking end of a gauntlet the salmon must run.

After decimation of the runs by others, Settler said, Indians are expected to be content with short fishing seasons on the few that survive.

"The problem lies with the ocean fishery," Settler said. And dams have turned the Columbia into a series of stagnant, polluted pools, he added. "Whites don't want to talk about our culture — the fact that fishing is what we've been doing for hundreds of years. It's been the conquering race wiping out the livelihood of the conquered race."

Counters Schwab: "We realize Indians have the right to fish. But fish runs are declining. They have the last chance to save the fish. We have to get them up over the dams."

The tribes have taken some steps to cooperate with the states. They agreed to a five-year conservation compact that has sharply limited their fishing seasons. Three tribes hope to form an intertribal police organization to crack down on illegal fishing. But state and federal officers say Indians continue to abuse ceremonial fishing.

Under court decisions in the 1970s, the upriver tribes are allowed fish for ceremonies and subsistence as well as a right to 40 percent of the spring and 60 percent of the fall commercial anadromous fish runs.

Fisheries officers complain, however, that only a fraction of the fish netted under ceremonial permits are being used for religious or social gatherings. The rest are being sold on the black market, they allege.

"Ceremonial fishing has increased in the past five years from 20 nets up to something like 300," said Schwab. "We've documented quite a few fish are not going to the ceremonies."

When Mrs. Settler was investigated, agents found that her shipments of salmon and steelhead coincided with ceremonial fisheries. The number of these ceremonial occasions has jumped from 11 in 1971 to 63 in 1980.

The states complain that the number of nets used for ceremonial fishing should in theory catch far more fish than Indians report. They also protest that the catch from some nets is not reported at all. Finally, the tribes set ceremonial fisheries with little or no advance warning, giving agents little chance to monitor the catch.

Police Chief Sanders agrees ceremonial fishing is being abused.

"In the last ceremonial," he said, "there were fish buyers in boats right on the river."

Arrests? The fishermen were not members of his tribe.

In such a situation, the Indians at Cook's Landing are unusual only in that their defiance is so blatant. With law enforcement tangled up in emotion over race, rights and proper jurisdiction, it becomes less surprising that officers are not eager for pitched battles with the SoHappy group.

# ATTACHMENT III

Testimony by Levi George

U.S. v Sohappy et al.

Trial on April 13, 1983

Pgs. 963 - 966

Q Have you ever seen him to ignore that Indian law?

A No.

Q He abides by it?

A He practices that right.

Q Have you ever discussed with him the beliefs and traditions of Indian fishermen on the Columbia River?

A No, not really, he knows the law.

Q In your opinion does he fish within or outside of the traditional Indian laws that govern fishing on the Columbia River?

A No, I don't know that.

Q The traditional Indian law.

A Well he fishes according to the traditional law of our fishery.

MR. HILLIER: Thank you very much. I have no further questions.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. SCHROEDER:

Q Good morning, Chief George.

A Good morning.

Q It is good to see you again. Chief George, the Yakima Nation when they need ceremonial fish, issues permits

ATTAchmeNT III ①

to fishermen to take those fish, is that not correct?

A That's correct.

Q And those fishermen that are selected to take ceremonial fish are selected by the tribal officials, is that also correct?

A They are selected by the chief, yes.

Q In fact that is a traditional thing as well, is it not, sir, for the elders of the tribe to select the fishermen to take the ceremonial fish?

A Not really, sir, if you are a member of a certain longhouse, a church, if you are an ancestor of a leader, then you can go out and fish for the ceremonial.

A You in fact yourself on occasion get a ceremonial permit and catch fish on the river under that permit, is that correct?

A Yes.

Q You don't sell those fish, do you?

THE WITNESS: Do I need to answer that, your Honor?

THE COURT: Yes.

A Well I just call it bartering.

Q Do you turn most of those fish in to the tribe under the permit?

A Yes.

Q You didn't sell any fish to AMR when they were --

A III' ②

A Well I've explained already, you know, there is Indian law, after the feast a person can do anything he wants to.

Q Where is that law written, sir?

A Like I said, time immemorial.

Q It is not in the Yakima code, it is not in the Yakima Tribal code?

A Well, it's in the Creator's code, I guess I would say it that way.

Q You are also a commercial --

A Let me explain to you. You know, before any law that was brought to this country by your ancestors we abide by the Creator's law, and most of us still abide by that law, it's very important.

Q You also abide by the laws of man, do you not, Chief George?

A The law that you are speaking of, I know what you are talking about, and I didn't go for it as a chief, but at times you become a minority in your own group. I object to some of the things that you are going to question me as a chief and a leader, I didn't go for the amount of fish that, you know, you go asking for ceremonial, that's against my religion, I don't go for that.

Q You don't go for what, sir?

A III ③

A Ceremonial amount of fish that they, like they do today, that's against our religion, sir.

Q But you abide by those laws, don't you?

A Yes and no.

Q And haven't you made public statements in fact that your tribe does not condone fishing in violation of those permits, outside of those permits?

A You know in all races --

Q Could you answer my question first, Chief George?

A Pardon?

Q Could you answer my question first, please? Have you not made public statements that your tribe condemns the abuse of the ceremonial permit, and the fishing outside of that permit?

A When we get permits we let the people fish, we don't keep track of them, what they are doing --

Q That is not my question, sir. Haven't you yourself made public statements that the Yakima Indian Nation does not condone the illegal sale of those fish, ceremonial fish?

A I do not call anything illegal, to me all fishing is legal to us.

Q Is it that you don't understand my question, sir, or is it that you don't want to answer it?

A Well maybe I don't want to answer.

A III ④

1

Relates to p. 113, line 22

The Department of Commerce has never maintained that Indian fishing was solely responsible for the disappearance of 40,000 1981 fall chinook above Bonneville Dam. However, the NMFS Enforcement Division produced undisputed evidence that from April 1981 to June 1982 at least 98 tons of Columbia River salmon and steelhead were illegally taken and sold by Indian fishermen in violation of tribal, state and Federal law.

NMFS and state law enforcement officials still maintain that illegal fishing was a major factor in the loss of adult salmon from the Columbia River. Ninety-eight tons of illegal, unreported fish, of which 86 tons were adult salmon, is significant (Attachment IV).

# ATTACHMENT 1V

## Department of Commerce Press Release

UNITED STATES DEPARTMENT OF
COMMERCE
NEWS
WESTERN REGIONAL CENTER
SEATTLE, WA 98115

NOAA-SEA-82-12

FOR IMMEDIATE RELEASE
JUNE 17, 1982

## FEDERAL AND STATE AGENTS MOVE ON ILLEGAL FISHING ACTIVITIES ON THE COLUMBIA RIVER

Federal agents of the National Marine Fisheries Service, and Washington Department of Fisheries officers today, in a surprise raid, served a Federal search warrant at Cooks Landing, Washington, culminating a fourteen-month covert investigation of illegal salmon fishing on the Columbia River.

The undercover operation developed and documented substantial information which may lead to court action over the taking and commercial sale of at least 53 tons of salmon, steelhead, and sturgeon from the Columbia River system during the period April 1981 through May 1982.

Wayne Lewis, Special Agent In Charge of the NMFS Northwest Regional Office's Law Enforcement Branch said, "This combined Federal and State enforcement effort should serve notice on the criminal element that illegal fishing will not be allowed to further decimate an already depressed fishery resource." Lewis added, "The extent of illegal fishing revealed by the investigation verifies the position of law enforcement officials that illegal fishing has been a major factor in the loss of adult salmon from the Columbia River." In 1981, some 40,000 adult fall chinooks were unaccounted for between Bonneville and McNary Dams. Lewis also noted that Cooks Landing has, in the past, been the scene of confrontation, violence, and a source of danger to law enforcement officials.

- more -

In April 1981, at the request of the Washington Department of Fisheries, the National Marine Fisheries Service, Northwest Regional Law Enforcement Branch undertook the development of a covert investigation in the Columbia River area for the purpose of documenting the quantity of salmon illegally taken from the Columbia River system and identifying illegal commercial markets for those fish.

One NMFS Special Agent worked undercover from April through mid August 1981 and was joined in September by one additional NMFS agent and an undercover officer from the Washington State Department of Fisheries. The Oregon State Police and the Washington State Patrol each provided one additional officer to help keep abreast of increasing illegal activities.

The investigation was focused on the Columbia River between Bonneville Dam and John Day Dam but extended along the Deschutes River, the lower Columbia River system and through 5 Washington and 2 Oregon counties (Klickitat, Skamania, Cowlitz, Wahkiakum and King in Washington; Hood River and Wasco in Oregon).

During this investigation the undercover operation documented the illegal taking/possession/sale of approximately 53 tons of fish involving transactions totaling over $150,000.

The data obtained from this investigation will be a substantial and valuable aid in planning future enforcement efforts on the Columbia River and should also provide vital information for the effective management and maintenance of the Columbia River salmon stocks.

# # #

For Further Information

H. A. Larkins, Regional Director
National Marine Fisheries Service, F/NWR
7600 Sand Point Way N.E., BIN C15700
Seattle, WA 98115
Tele: (206) 527-6150

Hal Alabaster
NOAA Public Affairs
Western Regional Center
Tele: (206) 527-6046

or

Wayne C. Lewis, Special Agent In Charge, Law Enforcement
National Marine Fisheries Service, F/NWR
7600 Sand Point Way N.E., BIN C15700
Seattle, WA 98115
Tele: (206) 527-6133

# STATEMENT OF DAVID SOHAPPY, SR.

Submitted to:
The United States Senate Select Committee on Indian Affairs
April 19, 1988

GREETINGS TO SENATOR DANIEL INOUYE AND SENATOR DANIEL EVANS:

My son and I appreciate your interest in helping us to obtain our freedom from prison, where we were sent for violating the Lacey Act Amendments of 1981. Even though the jury in Los Angeles found us not guilty of being in a conspiracy, and not guilty of tribal law violations, we still received five year prison sentences under this law. My old grandfather Smohalla said, "It is a bad word that comes from Washington. It is a bad law, and my people cannot obey it. I want my people to stay with me here. All the dead men will come to life again. Their spirits will come to their bodies again. We must wait here in the homes of our fathers and be ready to meet them in the bosom of the mother." This Lacey Act was a bad law for Indians on the Columbia River, and I hope the United States Senate Indian Affairs Committee will help to keep it from being used to hurt other Indians.

The government ignores the finding of our tribal court that said state and federal agents acted improperly, and the finding that the regulations in 1981 and 1982 infringed on the free exercise of our traditional religion. Meanwhile, a non-Indian corporation caught smuggling millions of pounds of salmon under the Lacey Act gets no criminal prosecution, only a seizure of some of the goods, and hires a big Seattle law firm to challenge this Lacey Act. They say it was unconstitutionally vague when it applies to foreign law regulations. The National Marine Fisheries Service was so sure that it applied to us Indians that they started their sting operation on April 13, 1981, seven months before the president even signed it into law! The prosecutor said "The instant investigation was begun in anticipation of expected changes in the Lacey Act. If such changes had not occurred, the major violations would have been referred to the appropriate state officials for prosecution". This is a very strange statement, since the government press release issued on June 17, 1982, the day thirteen carloads of agents raided our little fish camp at Cooks Landing, stated that the investigation was brought at the request of the Washington State Department of Fisheries.

The State of Washington has been harrassing me for years, stealing our nets, but never could make a case against me. I told all these things to the United States Commission on Civil Rights at their hearings in Seattle, and their report INDIAN TRIBES: A CONTINUING QUEST FOR SURVIVAL had a chapter describing how we have been treated. The report said that the federal government has not effectively protected and assured our treaty rights, and that this state has always used its authority to deprive us of our fishing rights. They also said that Indian tribes have been blamed erroneously for the crisis concerning the scarcity of fish. That report came out in June 1981, but federal and state law enforcement were already on the river, sneaking around, buying fish, waiting for a change in federal law to be used to put me in prison. And sure enough, their press release blamed us for an additional forty thousand "missing" fall chinook above Bonneville Dam! Later we hear that pollution from an aluminum plant caused the fish to go away, but no government press release says "We are sorry, Indians not to blame after all". Seems like my father and I should have stayed home and saved our breath, since the State of Washington and the National Marine Fisheries Service don't read what the U.S. Civil Rights Commission has to say.

Ever since they got this Lacey Act conviction on me, the same agencies have been trying to get me and my family kicked out of our home at Cooks Landing. They claim we are dangerous, but the most dangerous thing they found in their raid was my old trunk filled with constitutional law books. They call us greedy, but our house has a dirt floor, wood-burning stove, and only a few salmon in the drying shed which they took and sold. They did not need thirteen carloads, airplanes, automatic weapons, and press releases to serve their warrant called THE UNITED STATES OF AMERICA v THE SOHAPPY FAMILY DWELLING AT COOKS LANDING, WASHINGTON. Our religion teaches us to argue for our rights, not to fight.

All these years of arguing with the state, and sometimes with my own tribe, don't mean much if I have to be remembered as a criminal and a dangerous poacher. I want to set the record straight, so that people who care about the truth will know what happened to David Sohappy for trying to keep his religion, and for trying to live as our old people lived. I want my children and their children to know that I did not get equal justice under law, and that the state and federal agents who conspired to put me away will someday have to answer for what they did. My struggle has been for all Indian people who have rights along the Columbia River, for our children, and for the natural salmon in our river.

I was born at my mother's allotment, 2 1/2 miles south of Harrah, Washington on April 25, 1925. I spent my early years going to White Bluff, which is now called Hanford. My grandmother on my father's side had a fish drying shed there, where we would be from about April until the fall around October. I used to go there until I was about six years old, and then went to live with my grandmother on my mother's side. That is where I learned about Indian language and religion. I remember going to the longhouse from way back then, as my parents were firm believers in the Seven Drum or Washat religion. I used to attend every week.

I started going to school when I was seven years old. I went for two years and got sick for four months, and still I passed to third grade. Every spring I'd accompany my grandmother to the mountains to dig roots, until spring school started. That was on spring vacation. I'd go hunting for deer and grouse while my folks would get ready for the first food feast. At this time I didn't go fishing for the first food because there were others that used to go. They would go to Lyle, Washington, to get the first salmon, usually about April in the first two weeks of

April. I used to go hunting.

Then we would have our ceremonies for the first food, preparing it all day Saturday for the Sunday event. After all the ceremonies were done, then it was alright to harvest the roots and the salmon until the huckleberry feast in August. The first week after that feast it was alright to go pick the huckleberries from that day on until the next year. Then the cycle would begin again. We always had to observe the first food ceremony before we fished or dug roots or gathered berries. After the first food feast, then we would go fishing or root digging.

I lived in the Yakima Valley for about twenty years. My grandmother wanted me to farm, but my heart wasn't in it. Whenever fishing started, I would go down and catch the salmon, never staying too long as I had to return to the farm. We had a few horses and cattle--not too many--60 or 70 head at most. But my love for the river always made me go for awhile.

I worked in a government garage in 1945 until 1946, then I was drafted. I served in the Army Air Corps for 11 months and 10 days. I trained at Sheppard Field, transferred to Bellevue, Illinois and back to Sheppard, and then to Newport News, Virginia and then to Hamilton Airfield, California and to Hickham Field in Hawaii. While there I was advanced to buck sargent. Then all the fathers were to discharge and I was eligible, so I was shipped back to Fort Lewis, Washington.

I didn't get my mechanic job back, so I went to work for a farmer and maintained our farm also. I've worked for a sawmill, been a carpenter, electrician, plumber, heavy equipment operator, and drove everything the garage had back before I left for the army. I had a long braid before I went to the army, but I had to cut it off. After I came back, I had to weld with a gas torch and electric arc weld. I never had any schooling on any of these things I did, they just came to me easy.

The only time we didn't go to the longhouse was during the war years, but after that we went again. My wife and I and our kids used to hold services, sometimes just the family and sometimes we would have lots of guests. In the meantime, I would go fishing at the Yakima River, Priest Rapids, and at Celilo Falls; not steady, just a month or two in the Yakima River, it started around May to part of June. But at Celilo Falls it started around the last part of February until November. I'd go fishing off and on at that time, until the Dalles Dam was completed.

Then my brother Aleck, now deceased, started going to Cooks Landing with his friend and his brother. Their names were Clarence and William Tahkeal. Then I joined them at that time seasonally, starting in March and going until November. My grandmother's sister lived in what is now Drano Lake, Little White Salmon River, until it got flooded out in 1938 by the Bonneville Dam. The Corps of Engineers promised the people that lived there the year around that they would replace the homes that were flooded out. To this day, they never did live up to their word.

I used to go visit my grandmother, and as far back as I remember they had shacks and drying sheds there where they cured salmon for our own use and for trade and barter. Forty to sixty sacks of salmon to live on, they would salt some and when the freezer came along they froze some. They used a lot of different methods to cure their salmon. As with all Indians at that time, they gave lots to longhouses, to elders, and to friends, churches, and to other people that needed fish.

But always whenever a ceremony came along there was always salmon donated for the ceremony to help feed the people that came. We always followed this custom and tradition, our heritage, until after 1958 when Celilo Falls got flooded, and the Dalles Dam stopped all fishing as we used to do. Then we were already using gillnets at Cooks Landing. Then others got into gillnetting back in the early 1960's and then the tribal council started setting seasons. I was working in the sawmill in White Salmon back in the 60's and got laid off with no unemployment, so I went to the big river in 1965. I had only used to go for fishing seasons only until I lost my job. I had my father take care of my cattle and farm, and I stayed at Cooks Landing until now. I have fished at Cooks Landing since 1965 fishing all the time going by our traditional ways.

Myra, my wife, always had salmon drying on the racks all year long, because after we joined the Feather Religion, we had to have salmon to go along with other foods, as we were known as the salmon culture people. We have salmon in our meal two or three times each day. We don't eat too much other food, but get some staples in trade from some other people, and also buy some of what we need--not too much. We have never asked for surplus food or butter and cheese, and we never asked for Welfare. We have just lived off the land, and my sons went hunting when we needed meat. We never took more than what we needed.

Back in 1968 I was arrested by the state fishing agents, and sat in the county jail for three nights and four days. Then people from back east came--David R. Hood along with Hank Adams. That's when **Sohappy v Smith** started, and I stayed on that case until 1977. I wouldn't compromise with the states on a lot of issues, so the intervenor tribes got tired of me and got George Dysart and Beverly Hall of Oregon's Attorney General's office rule me out of **Sohappy v Smith**, and the intervening tribes took over.

After the tribes took over, then they formed the 5 year compact ten years ago, where our tribal councilmen signed a new agreement with the states of Oregon and Washington without the consent of our General Council. All these laws and regulations have been passed without the approval of the people, as all rules and regulations are to be approved by the people before they are valid. In 1968 the case of **Sohappy v Smith** was on regulations that were imposed on Indians which were unfair. We were supposed to get fair treatment from the states of Washington and Oregon. They did enact some regulations but always with wording working the non-Indians way--not even fair to Indians.

Back when settlers came to the Northwest, they asked the chiefs if they could catch a few salmon to feed their starving families. So the chiefs said alright you can catch a few salmon. The settlers got a privilege to catch a few fish to feed their families. So all they got is a privilege to the salmon, not a right, as a privilege can be regulated and a right cannot be regulated. The Indians have been living along the river for thousands of years. They were living off the river at the beginning of gillnet fishing again. The fishermen set their days when we were to start fishing and how long. That was in the 1960's--so many days on and off for two weeks, and start again for three weeks for the year.

We started with 1500 feet nets, and for conservation the Indians cut down to 500 feet nets, and the states still said that the nets were too long, while the non-Indians still use 1500 feet nets below the Bonneville Dam. So the Indians went to 300 feet nets, and it stayed at 300 feet long until two years ago, since 1985 and this year, the Intertribal Commission said to use up to 400 feet nets. But the non-Indians never cut down on their net length, remained the same all the time at 1500 feet, all the time saying that they were fishing "in common". To me that's not "in common", when they use 1500 feet nets and we use up to 400 feet nets. If they are to fish in common, they have to use 400 feet nets, not 1500 feet nets. When my father and I went to the civil rights hearing in Seattle in 1978, he testified that "in common with" meant to the Indians was in common with each other of the Indians at the time of the treaties-- the four tribes of Nez Perce, Umatilla, Warm Springs, and the Yakimas--not with the multinationals or the non-Indians. That's the way they understood it: in common with each other from the four tribes, not with whites. And they said the law is supposed to be interpreted the way the Indians understood it, not the way the learned people understood it.

The old people can interpret the treaty in Indian language, and it comes out different when interpreted by Indians. Lots of meanings are to be understood by Indians like they would interpret it, not the way non-Indians understand it, even though not written in law books. Another thing understood by Indians is that if a treaty is broken, then the land comes back to them as the original owners. They say that a treaty is like a contract when broken or abrogated, then it is like when it was originally: all rights go back to the original status, and we should be reimbursed for the use of our land.

Getting back to **Sohappy v Smith**, it was originally stated to be to get fair seasons set for the Indians that fished above Bonneville Dam. The non-Indians would start early in the winter and spring, summer and fall time getting the first chance at all the salmon before the Indians had a good fishing season. The lower river would start early in the winter for salmon before any run of fish was ever recorded over the Willamette River falls at Oregon City, or at the Bonneville Dam, while saying that the Indians cannot start until there is a count of 40,000 salmon over the McNary Dam even though there was a count at the Bonneville Dam. The lower river fishermen always got the first chance at the fish before we even got our nets in the river. They did this all the time, even after **Sohappy v Smith** when the judge ruled that they have to curb their fishing so that tribes can get their share of the salmon. The non-Indians always had some other wording to get the non-Indians back on the river. They would fish for jack salmon only, anything under 24 inches in length. When the fish is 24 inches in length they are a small salmon weighing around 8 to 12 pounds. A jack salmon was supposed to be 18 inches in length and under 5 pounds. That is a jack salmon, not 8 to 12 lbs.

Back in the 1970's when the judge ruled that they should stop fishing, they still fished below Bonneville Dam just to make it like it was necessary for conservation to stop Indians from fishing, making sure there were less salmon going over Bonneville Dam. They even employed electric fences to stop the salmon below the Bonneville Dam. The electric fences emit impulses that stop them from going past a certain place. They would divert the salmon into the tributaries of the Willamette River, Cowlitz, Lewis and Washougal rivers--anything to get them stopped from going over the Bonneville Dam. They even divert the salmon into the Bonneville Dam hatchery and sell the salmon as surplus, saying that these salmon weren't destined over the dam. I saw three semi trucks hauled into Allied Fisheies in Cascade Locks, dressed out salmon roe in 25 lb boxes and salmon carcasses iced and readied for shipment to the orient. Anything to stop the salmon from going over Bonneville Dam, just to make it look like it was necessary for conservation that there weren't enough salmon over the dam, because that is the only time they can regulate Indians. But before the states can regulate they have to stop all other users first, which they have never done. They always had the non-Indians fishing the year around, while stopping the Indian for conservation purposes and not practicing what they preached.

While the court order was in force, the non-Indians still fished on the Columbia River, up above Astoria Oregon at a place called Tongue Point, which is about 13 miles east of Astoria Oregon. We objected to that because they were catching all the salmon that were destined above. They had this fishing open the whole time the court said they were to stop, and they stopped at Tongue Point. And we found out later that they were fishing anyway, this time from the Astoria Bridge out, still open all year around. Now they are closed from fishing on the mouth of the Columbia River, and have a closure out 200 miles from the bank of the Columbia River--a corridor from bank to bank at the mouth, while open from the beach out where the salmon come into the Columbia River. So they are open there, no different from the Tongue Point opening. In June the Oregon and Washington fishery departments open the lower river to fish for shad, a fish caught only for its roe or for cat food. When fishing for shad, it takes the same size of net to catch shad as it takes for sockeye-- a 5 inch web. The shad isn't worth fishing for, there is no market for it, but still there are fishermen that go fishing depending on the incidental catch--which in this case is sockeye. The sockeye is a salmon which is under 23 inches in length, and as such it is not counted against the non-Indian catch. They are decreed as jack salmon. They also open up fishing for sturgeon in June using 9 inch to 11 inch nets, and that size net takes a lot of what is known as June "hog" salmon--a big fat salmon with girth way over the regular salmon weighing up from 30 to 70 lbs. Since they opened up sturgeon fishing below Bonneville Dam they caught most of the June hogs. We never get that salmon above the Bonneville now, it is all incidental to the non-Indian fishery.

Just before I went to prison in September, 1986, the Indians said they would sue the states and the National Marine Fisheries Service if they never got the fish, so the states and the government said that the Indians would get fishing days and not to sue. Then the non-Indians said that the Indians would get 23 days of fishing in the fall. In the meantime, the non-Indians opened up their fishing in the ocean, flooding the salmon market. When the Indians got their fishing time in, there was no market for the salmon, since the multi-nationals already had the market flooded . The Indians caught a lot of salmon, but no price for their fish. The same thing is happening last year: there were a lot of fish, but no market because the market was filled already.

The non-Indians don't care if they deplete the run below the Bonneville Dam. They depend on the above run to stock the lower hatcheries, like the Spring Creek Hatchery and others. That is why they conserve only above the Bonneville Dam, where the Indians have to conserve. Even back in the 70's, when the judge said that they could not fish, they had fishing going on all the time. I would go to Portland, Oregon, and on my return later, I would see drift boats out in the river fishing when it was ordered closed by Judge Belloni. The orders were to never be out on the river before dawn, and I saw fishing barges--the freezer type--loading the catch before daylight. At that time, the plan was to have odd numbered boats to fish one night and even numbered boats fish the next, and to be out before daylight. Anything to make the run look short over the Bonneville Dam.

Steelhead are not to be sold in Oregon, but the fishermen sold their steelhead in Washington state where it was legal to sell steelhead salmon, or simply sold it as salmon. That is what the non-Indians did and are doing now. Before there were any laws about selling to factory ships out to sea, they would sell out there, never in the mainland.

I have written to David Vale the probation officer in Tacoma and told him what the non-Indians have been doing here on the Columbia. I wrote thirteen pages to him as they told me to write a few notes to him about the salmon fishing here in the Columbia but I never heard anything after that, only found that he told the U.S. Parole Commission that I was responsible for all 6,100 fish bought by the Advanced Marketing Research undercover operation from 70 Indians over 14 months. But that was the government's conspiracy claim that the jury found me not guilty of leading.

I also had William C. Klein, and attorney from Vancouver, Washington, file a brief on Indian religion back in the 70's. I don't know what date to be exact, but it is still sitting there. Judge Belloni didn't want to hear it. He just said that religion wasn't to be brought into the case or the court. He also told my attorney to file a damages suit against the states, but they said no. The only understanding I have on what I read on **Sohappy v Smith** is that the Indians have an **absolute** right to their reserved rights, not to be qualified by the states.

I want to go back to my home at Cooks Landing on the Columbia River, to live with my wife Myra and our children and grandchildren. If the government wants me out, let them give me a place for the home of my family flooded by the Bonneville Dam. Or let them clean up the pollution and nuclear waste around the old Sohappy camp at White Bluff, and I will live there. I and my wife do not want to be put on the reservation. I am a Wanapum, a river person, and I belong on the banks of Che Wana. If I can honor the salmon in our traditional manner, the Creator has promised to return it one-thousandfold. The non-Indian regulations have failed, why should they still keep telling me not to fish? My life is for the salmon, after my work is done, I will move on. That is all I have to say for now.

# OVERSIGHT HEARING
# ON COLUMBIA RIVER INDIAN FISHERIES MANAGEMENT
# BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

APRIL 19, 1988

## STATEMENT OF JOHNNY JACKSON
UNDERWOOD, WASHINGTON

First I want to say I am a traditional chief of the Klickitat and Cascade from along the Columbia River. We live on the Columbia River as our ancestors have since time immemorial, we have never moved to the reservation which is about 100 miles from the river where we reside. We never moved because when the treaties were signed by chief Slockish at Walla Walla we reserved the right to live at our usual and accustomed sites along the river. These sites were reserved because they hold all of our religious sacred sites, cemeteries, gathering sites, fishing sites and where we have always maintained our livelihood.

Many times the tribal council which resides on the reservation will sign agreements and make rules and regulations on our lands and on our rights without consulting us people who live on the river. We hear about these agreements or get caught up in laws after these agreements are signed and our people get hurt by it. Since we have our traditional chiefs and leadership in place along the Columbia River, our chiefs as the leadership should be directly included and consulted in any negotiations or agreements that take place between any federal, state or tribal governments or their dessignated authorities.

The Lacey Act which was ammended in 1981 and which allowed tribal fishery misdemeanors to be federal felonies would have been important information to the Indian fishermen along the Columbia River. However, we were never informed of the Lacey Act until the arrests at the conslusion of the salmon scam federal undercover operation in June of 1981. We understand now that tribal councilmen of the Yakima Indian Nation were aware of the passage of this act but never informed the Indian people on the Columbia River. We further understand that the salmon scam operation was began in April of 1981 in anticipation of the passage of the Lacey Act which was signed by the president in November of 1981. Although the language in the Lacey Act states that the Act would not diminish treaties, we feel that passage of this act was advocated by certain elected and appointed officials to focus on elimination of Indian fishing on the on the Columbia. We believe this because since the non-Indian discovered monetary and recreational value of fish that many attempts have been made to destroy the Indian fishery. We as traditional people on the Columbia are even in greater jeopardy because our belief in traditional Indian fishery management are without a voice in our viewpoint with the Yakima Indian Nation, the Columbia Inter-tribal Fish Commissions, the states or federal governments. The Lacey Act has been one more tool to diminish our fishing and traditional lifestyle on the Columbia River.

I also want to state that many areas along both sides of the Columbia River were areas that were included in our traditional Indian fisheries. We never relinquished these areas. However, today we are asked to acquires licenses to fish at Willamette Falls for eels. Willamette Falls was one of our traditional fishing sites we have never relinquished our right to fish at this place, as our ancestors had done in the past.

Many of our fishing sites along the Columbia have been taken from us not by negotiation, agreement or treaty but by the exclusionary tactics of the non-Indian over the decades.

Chief Johnny W Jackson

Johnny Jackson, Chief, Klickitat-Cascade
Mid-Columbia River Chiefs Council

Indian name, Chief Tawatash

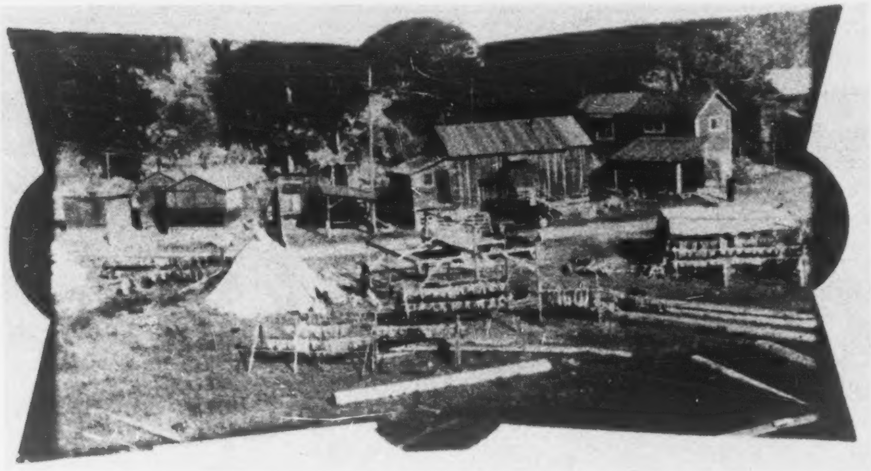
From: Johnny Jackson
P.O. Box 360
Underwood, Wa. 98651

To: Senate Select Committee On Indian Affairs
Washington, D.C. 20510-6450

RE: Submission of photograph into the record of the April 19, 1988 hearing on Columbia River Indian Fisheries Management

Photo: Underwood, Washington fishing village

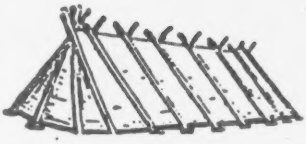
Photo Description: This photo was taken in 1930 before the construction of Bonneville Dam. The homes and drying sheds pictured were removed by the Army Corps of Engineers with the promise that they would be replaced. The flood waters from the dam never inundated these home sites. Our people fished in the White Salmon River by this village with spears, gaff-hooks, and dip nets made of dogwood willow for the hoops. Today we are prohibited from fishing in the White Salmon River. Only sports fishermen are now allowed to fish in this traditional fishery. The village at Underwood was never rebuilt by the Army Corps of Engineers. I, Johnny Jackson, still live at Underwood but I am facing eviction by the Bureau of Indian Affairs.



# OVERSIGHT HEARING
# ON COLUMBIA RIVER INDIAN FISHERIES MANAGEMENT
# BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

APRIL 19, 1988

STATEMENT OF HOWARD JIM
CELILO VILLAGE
CELILO, OREGON



My name is Howard Jim, a traditional chief of the Columbia River from the Palouse to the Pacific Ocean, which includes both sides of the Columbia River.

On the 13th of April 1988 I recieved a letter informing me of a oversight hearing.

Although it is short notice I will briefly present my written statement with a request to present additional oral testimony. Since the beginning of time according to our traditions we have fished at our place on the Columbia River. We have today as we have always had traditional beliefs and customs that influence our behavior in regards to fishing. We have reverence for fish and fishing and our own traditional Indian fishery management is an important aspect to the total fisheries management on the Columbia River.

The construction of dams and other development on the Columbia River greatly affected our traditional ways and fishing methods. We also lost usual and accustomed fishing sites along with the loss of our homes. We feel that the promise of 400 acres in lieu of these flooded fishing areas is long over due. If the Yakima Indian Nation has been compensated for the loss of these sites we have never recieved any of the compensation.

Recently legislation was passed to make the Columbia Gorge a national recreation area. We have seen many efforts in the past by the federal and state governments to enhance the gorge area after they have done much more to destroy the Columbia and all that is in it and around it. Part of the destructive effort has been on the traditional beliefs and lifestyle of the Indian people. Since Indian people have always been here on the Columbia River, along with the fish, water, rocks and all the other living things, we now request that we become part of the enhancement effort. We request that land promised us be forth coming. We also request that the traditional lands from the Palouse to the Pacific Ocean on both sides of the Columbia River be once again used by our people for the purposes of fishing, gathering of traditional foods, hunting and other traditional purposes. Our traditional ways and customs which includes reverence for fish and fishing is very important to our continuance as Indian people living on the Columbia River. In our belief the water comes fist and then the salmon, then roots and other traditional foods and medicines, and then hunting for the deer food and clothing. This is our order of doing things and this is the way of all Indian people in my area. Now we see the water-the giver of life - in the polluted shape it is in. We fish according to our traditional ways and we are prevented from doing so by the non-Indian and tribal governments through the Lacey Act and Management Plans that do not include our traditional fisheries management viewpoint. We are prevented from gathering our traditional foods and medicine due to non-Indian ownership of our traditional gathering areas and federal owhership now taking place in the Columbia Gorge. We also must be allowed to hunt so that we can eat and clothe ourselves according to our traditional beliefs.

We wish only to live as our ancestors did with reverence for the things of which I have spoken about. We wish to practice our traditional beliefs without intereference from the non-Indian or their agents from the Palouse to Pacific Ocean which inclludes both sides of the Columbia River.

Howard Jim

Howard Jim, Chief
Mid-Columbia River Chiefs Council

STATEMENTS MADE BY WILLIAM YALLUP, Chief of the Rock Creek Indians, and FRANK SLOCKISH, Chief of the Klickitat Indians, both of which tribes are known as the Columbia River Tribe.

The following statements were made by the above named Chiefs, at a Tribal Council regularly attended by the Chiefs, headmen and principal men of the tribe, held in Rock Creek, Klickitat County, Washington and being the ancient and customary meeting place, with the following in attendance:-

| | |
|---|---|
| William Yallup, | Chief of the Rock Creeks, |
| Gus George, | Second Chief, |
| Frank Slockish, | Chief of the Klickitats, |

Oscar Billy, Willie John, Howard Jim, Jimmie George, Jim Moses, Charlie Canapoo, Johnie Barney, George Gibson and Sam Dave, composing the Council members, with John Whiz, Temporary Secretary, interpretor and spokesman.

The Council was held on March 18th and March 19th, 1945, and after giving discussion to the problem of those Indians living entirely off of the Reservation, yet maintaining tribal organizations intact, the following statements were made by the Chiefs, taken down in writing and given as follows:-

Statement of Chief William Yallup:-

"I will say that I am now standing on this earth, which my maker of the earth has made it my brother, and from it all the heart of my thoughts received the food which made my soul strong.

First was made the water and then the salmon were put in for my food. The mountains were then made and that is where the maker of earth put the deer and game which also is my food. And also the birds which are also my food and all are my custom to use and also the maker put many different roots on both sides of the mountains which was for women to gather for food. Also the maker put berries in the same mountains for women to gather for our food. The maker has put all those for our mother earth to keep for our food. All these different foods has been put on or made for my Indian people to receive for our food for all generations from the beginning up to this day.

Since then you, my white people friends found my Country which was made for my red people. You brought your children, boys and girls to this mother earth; you people have followed your guide to this country and where you made your laws. I am speaking now for the red people who all live outside of the reservations, now. I have made my statement regarding both.

To you white people and my red people I am explaining this and asking my Government for the same power as if I lived on the reservations, to be where I will be known by high government officials to speak for my people, and I have named my second chief after me. I have been selected by the general Council of my council men, who will be known by both the state and our government as such.

I am saying this for my older people and for my younger people, who are all with me, and also for my friend Frank Slockish, Head Chief of the Klickitat River Indians for his band of indians, for his own people and their children.

Therefor I don't want any reservation indians or Council men to take up any of my important matters without my approval.

This is what my Chiefs have followed when they were having Council at Walla Walla in 1855, at Treaty grounds, and they have always talked about the same food I have mentioned above.

I want that we all agree with each other to receive our rights on this mothers earth.

That is all I have to say."

Statement of Frank Slockish, Chief of Klickitat River Indians, Columbia River Tribe.

"I will say a few words after my friend. This 20th day of March, 1945. I am going to tell the truth. That is the way we red people remember our beginning and growth of our race, what my brother Chief Yallup has said today.

The white peoples laws are doing everything to take our food away. Since our red people have always lived where our maker put us on this mother earth, and we red people haven't forgotten that yet.

We are making our story of our food for our children to remember after us, and our children will carry on the way of living on this mother earth on the way of living. I don't remember when the white people came and took our food away from us red people and thought they were sole owners of our food. We know that diffe ent fish and food are our food. Same way with deer, our food. We know our roots of all kind and the same with berries and all kinds of berries as our foods. I am making my statement to help my brother with these few words today. What we remember is our food. This is my statement to you, my white friends, so you could see that some laws make me worry about my way of living. That is all I have to say about my different food from this mother earth.

I could make more but I am not feeling just right. I haven't any more Indian food, but my food I mean that we red indians have always had. I am not living like reservations indians. I don't have cattle or sheep or any other stock. We are all living outside of the reservation. I am stating, you know, one thing that makes me feel bad, and which the war department don't know.

The war department don't know how bad we feel about all the boys in the war to day, to protect that food and our country. I am begging your high war department officials to help us red people, when we will be given power to do good, and we will then all thank you. We do not want states to put their laws in it too."

Read, translated and interpreted to the following Chiefs and Council members, and signed formally by them, each for himself, this 20th day of March, 1945.

WILLIAM YALLUP, Chief of Rock Creeks.

Gus George, Second Chief.

FRANK SLOCKISH, Chief of Klickitat River Tr[illegible]

OSCAR BILLY Oscar Billy WILLIE JOHN

HOWARD JIM Howard Jim JIMMIE GEORGE

JIM MOSES CHARLIE CANAPOO

JOHNIE BARNEY Johnie Barney GEORGE GIBSON

SAM DAVE.

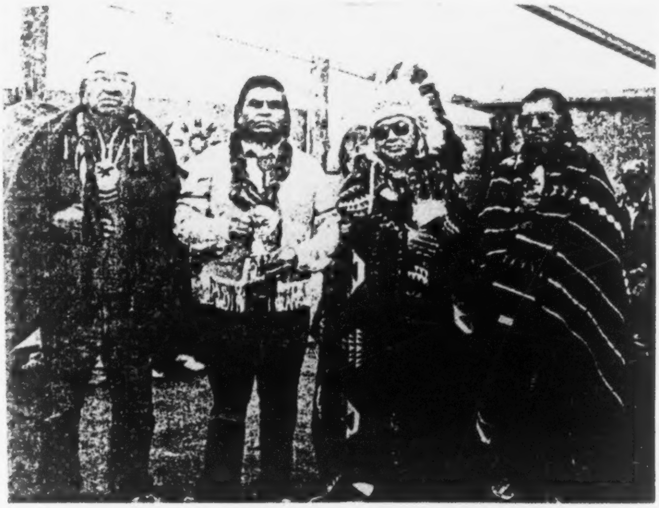
Council men of Columbia River Tribes.

Sec'y & Interpator.

John Whiz

Signed and stamped before me, a Notary Public for Washington.

H. D. Brooks



Standing from left to right are sub-chief Howard Jim, Chief Frederick Ike, Sr. for the Kah-Milt-Pah Band (Rock Creek Longhouse), and Chief Wilbur Slockish, Sr. and his sub-chief Johnny Jackson of the Klickitats-providing the leadership for the Mid-Columbia River areas in Washington and Oregon states. Ike and Slockish are charged with protecting their people, our religion, the Columbia River and its tributaries, land and mountains, and all the foods that are sacred to us-including planning and conducting our annual huckleberry feast at Cold Springs near Mt. Adams; this is truly following the footsteps of a past chief of the Kah-Milt-Pah's, Chief Yallup.

# POWER OF ATTORNEY

I, Wilbur Slockish, Sr. hereby authorize Georgia Lucei Goudy to represent the Columbia River Indian Fishermen at the April 19, 1988 Senate Select Committee on Indian Affairs Hearings in Washington, D.C.

Wilbur Jr. Slockish Sr.
Wilbur Slockish, Sr. 4-15-88
Chief of The Klickitats
and Ca sca des along the
Columbia River

William Charley
Witness

Donna Mason
Witness

# STATEMENT OF GEORGIA GOUDY

BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
April 19, 1988
Washington D.C.

Mr. Chairman, members of the Senate Select Committee on Indian Affairs, my name is Georgia Goudy a member of the Columbia River fishermen that lives along the Columbia River,

I appreciate the opportunity to come before you and voice our opinion on a law that was good for Indian country, nevertheless, this law needs to be addressed throughout Indian country. This law is the Black Bass Lacey Act, Public Law 97-79, an issue that should have involved Senate Select Committee on Indian Affairs hearings throughout the United States. This is a law that is far reachingfrom not only the United States but also into Canada.

It is a law that clearly discriminates against the Indian people, making them criminals on their own lands and putting them into prisons. It is a law that violates Treaty Rights and is unconstitutional and its effects need to be reviewed.

How constitutional can the Lacey Act be when it puts more value on fish than it does on an Indian life? When an Indian can get sentenced to five years in prison for fish, and yet when a murder is committed on an Indian reservation, that person gets six (6) months. Is that the true value our lawmakers place on an Indian life, 6 months, and five years for a salmon? Think about it, this is a known fact.

The testimony in support of the Black Bass Lacey Act has not been made available to the Columbia River Indian people. The lack of communication has created internal conflict within our own lands.

This hearing being conducted today "vitally" effects the Indian people in Indian country, yet we had to hear about it through the grapevine. A hearing as important as this should have been announced and ample opportunity granted for the Indian people to truly speak and address the concerns on this most unconstitutional piece of legislation. The Black Bass Lacey Act is clearly a violation of the trust responsibility the Federal Government has to the Indian people.

Senator Inouye knows of what I speak. He himself has come across to the northwest to assist the Yakima Tribal Council in the matter of David Sohappy Sr. and David Sohappy Jr. We, the Columbia river fishermen are eternally grateful to him and the Senators from Washington and Oregon who have assisted him in seeking freedom for the Sohappy's, but we still have Leroy Yocash and Wilbur Slockish Jr. imprisoned in Federal institutions away from their homelands. Again I ask, do you place more value on a fish than you do on the life of an Indian?

Can the Government condone actions of the federals to come onto trust land and encourage Indian people to become criminals and be sent to Federal prisons? Indians who are economically disadvantaged and struggle daily to feed their families. This brings about the question of how poor Indian people really are when there is no fish in the river. The lack of opportunities for employment, training, adequate housing and educational assistance for our Indian children in school, this leads to poor attendance, social problems and drop-outs. Our economic conditions along the Columbia River are poor, when there is no fish above the Bonneville Dam Indian families extend out andtake their younger families in to live with them. We preserve our fish by drying, salting, canning and freezing for future subsistance. This is a part of our tradition and culture, our way of life.

It is not the Indian who is depleting the fishery resource but the progress, industry and pollution. History shows the resource was never an endangered species at the hands of the Indian people, but at the hands of progress and the almighty dollar.

We, the Columbia River Fishermen, would like to request the Senate Select Committee on Indian Affairs to conduct hearings and review the Black Bass Lacey Act and the harshness of the sentences under this Act. Hearings to be conducted throughout Indian country.

This is why I pray that my testimony can go on record and not fall upon deaf ears, but an open heart and that the Senate Select Committee on Indian Affairs will hear our plea and review the Blass Bass Lacey Act and that together we can undo a law that should never have passed without the true input of the Indian people in Indian country.

Meeting: Rock Creek Longhouse, April 13, 1988
Speaker: Su-Lah-Ki-Hite (Sam Jim)

I was appointed to council to take knowledge into mind as a witness to the council of Rock Creek Band business and action. Later on assigned as interpreter for Indian language to english words. Since this time, there has not been a full attendance meeting until now.

He expresses, to what Tilouknute is asking and saying, what must be done is the council and members of Rock Creek Village and neighboring bands speak to apply the knowledge to the Chiefs mind, in order to answer in the hearing and testimony scheduled at the Senate Select Committee.

What it amounts to is that we will speak now, in order to protect the Indian rights for our children, so the will have a right to dig roots, hunt, fish, and practice our Washit religion and have land and water.

He worked as an Inter-Tribal law enforcer and for over one year being employed, no where was he told to protect the Indian rights, traditional values and customs. Realizing the direction he faced was being certified to do state and federal law enforcement, not recognizing his own Indian rights, traditions and customs and values.

All these important words,Unwritten Laws of our Washit religion has been handed down generation after generation from Chiefs of past, this teachings is and must always be passed on to our future children.

Su-Lah-Ki-Hite, Sam Jim, Interpreter
Mid-Columbia River Chiefs Council

Meeting: Rock Creek Longhouse, April 13, 1988
Dux Sino (Warner Jim) Statement
Councilman, Mid-Columbia River Chiefs Council

A man spoke for the reservation, remembering way back the name for land (En me tee chum) our word for Mother Earth. A time of animal world preparing for the time man would come on this world and a woman. Then there was the time all was given names, mountains, cnayons, creek, streams, trees, plants, deer, elk, bear, salmon, trout, birds, where the foods were is the homes of the Indians and all the parts of the animal were used not only for food.

When the Indian came into this world the bands of Spokane, Okanogan, Sinkiuse, Yakima, Cayuse, Clapooias, Wallowa to Bitter Root Mountains, Cascade Mountains then was known as one Nations the Walla Walla Nation. To this time Great Britian claimed some of our people, north of the Columbia River until the United States was settled in 1818, making a Canada border. The Indians met the whiteman with open arms and remember Lewis and Clark of the United States.

Up to the time of the Snake Uprising, we Indians helped the U.S. Army and even during the Yakima War. During the 1850 Treaty Councils, a man from here (Rock Creek) was the only man leader who spoke for our land and beliefs. Later, the railroad came pushing the Indians back, the roads then new laws such as the Range law again this brought disagreements about Indians usual and accustomed fishing places which produced the 1873-79 documented In-Lieu sites and again 1930's the Army Corps of Engineers closed out Indians from the Columbia River.

It is falsely stated that the Yakimas won the fishing rights to the Columbia. It was our men from here Rock Creek Village and Celilo Village that knew the words to speak, the ancestors of those speakers were all from the River Tribes.

Following the confusion of Enrollment to reservations. We are not trying to take ourselves out of a tribe because we are Indians and this is Indian lands. We are not trying to sell land, not sell our cemetary, not to sell our rights.

This is my statement.

Warner Jim, Councilman
Indian Name, Dux Sino
Mid-Columbia River Chiefs Council

Meeting: Rock Creek Longhouse, April 13, 1988
Statemen by Lah-Sie-Ut(Louise Billy) Elder

Her recollection 1f 1918, began with a man whom was a prisoner released for awhile who came back here to speak to BlackWolf to get council and let the Chief aware of his disposition for being incarcerated; himself being a Chief, Chief of Skin-pah Band. This all has a resemblance being confronted today; about our water, land, Indian individual rights, fishing, root digging, berry harvest and these statements should be known to Congress not known only to the small offices. She mentions that her grand children not being accepted for enrollment into a reservation.

We were recognized in 1918 and we were to get an Agency located in Centerville, Washington but someone put a stop to it.

Ther is no such a thing as a state line because there was Indians on both sides of the Columbia River.

The black writings want to stray our leaders not to follow the traditional life.

Lah-Sie-Ut
Louise Billy
Elder

# TESTIMONY OF N. KATHRYN BRIGHAM
ON BEHALF OF THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
CONCERNING
FISHING RIGHTS ON THE COLUMBIA RIVER
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. Chairman and members of the Committee, thank you for considering these matters that are of great significance to the treaty fishing tribes of the Columbia River.

My name is Kathryn Brigham. I am here on behalf of the Confederated Tribes of the Umatilla Indian Reservation, and I am a member of the Tribe's Fish and Wildlife Committee. I serve as a commissioner of the Columbia River Inter-Tribal Fish Commission. I am also an alternate member of the Southern Panel of the United States Section of the Pacific Salmon Commission, an international organization formed to implement the provisions of the United States - Canada Pacific Salmon Treaty of 1985. Most importantly, I fish for salmon and steelhead on the Columbia River in ceremonial, subsistence, and commercial tribal fisheries above Bonneville Dam near my home in Cascade Locks, Oregon.

As you may know, the mainstem dams of the Columbia River changed the lives of our Indian people by depleting our fisheries and by eliminating many of our fishing sites along the Columbia. Before those dams were built, the Corps of Engineers promised that they would protect our fish plus build hatcheries to keep our runs in the Columbia and they would purchase fishing sites in lieu of the sites we lost to Bonneville Dam. Our fish were replaced with hatchery production but the federal government, our trustee, in cooperation with the states of Oregon, Washington and Idaho made sure that these fish returned below most of our existing fishing sites so that Indians did not benefit from the mitigation. It has been only during the last seven years since the passage of the Northwest Power Act that we have seen interest in rebuilding our upriver runs so that Indians who have lost so much to those dams will now be able to benefit from mitigation. To a great extent, we have Senator Evans to thank for this because of his efforts as chairman of the Northwest Power Planning Council.

The Corps of Engineers also acquired 40 acres of in-lieu sites out of the 400 acres promised. Unfortunately, the maintenance of these sites has been a matter of dispute and some resolution is needed. In addition, the 40 acres provided are not sufficient to replace the loss of sites behind Bonneville not to mention the other mainstem dams; the 40 acres of in-lieu sites are too few to satisfy the access needs of our fishermen.

Testimony of N. Kathryn Brigham

Increasing fish runs to the Columbia resulting from the Pacific Salmon Interception Treaty and the Power Act Fish and Wildlife Program have increased the need for new in-lieu sites for our fishermen. You have been provided a briefing book that lists some potential sites for acquisition. During the next few weeks, we will be meeting with our fishermen to obtain input and with our governing body to complete a final list. The Umatilla Tribe therefore calls on this committee to instruct the Corps to purchase new sites and provide a firm source of funding for maintenance and operations. The treaty tribes whose members fish between Bonneville and McNary Dams are united in this request and we greatly appreciate your interest in this matter.

With regard to the Lacey Act, I have had an opportunity to review its legislative history and I find it hard to understand why it is being used against Indian people directly rather than to support tribal jurisdiction. During the last three years, we have successfully negotiated an agreement with the states of Oregon and Washington that recognizes our law enforcement capability and our tribal judicial systems. Under our agreement, state or federal officers citing tribal fishermen for violations of tribal law will refer tribal fishermen to tribal courts. Perhaps a similar arrangement could be developed and proposed as a legislative solution by this committee in order to strengthen tribal jurisdiction rather than to diminish it.

Mr. Chairman, on behalf of the Umatilla Tribe, I thank you for your continuing commitment to Indian people and the tribal governments that are elected to protect our rights. The issues that you are considering are both matters concerning government-to-government relations and we trust that you will keep this principle in mind as you seek solutions to these issues.

**WASCO**
**Education Service District**

422 East 3rd Street
The Dalles, Oregon 97058

Special Education 298-5156
Instruction 298-5157
Accounting 298-8454
Media 296-3046
Administration 298-5155

*Everything we do, we do*
*for someone else.*

April 18, 1988

While all youngsters are distinct individuals, with their own secret aspirations and hurts that they conceal from adults, there are certain recurrent elements in the lives of the children of Indian fishermen that cause difficulties with their schooling and career choices - too frequently, these elements bring them to feel that they have reached a dead-end, with dropping out of school their only alternative.

It is widely acknowledged that poverty is one of the keys to the drop-out problem. Staying in school is hard enough when you're poor and white. It's much more difficult when you're poor and Indian. Indian children of fishermen miss a great deal of school when they are needed by their familites to help with the fishing on the days available. With JOM and Title IV we have been able to furnish tutoring and in some cases, to help with school clothes when needed. We have so few students, however, that with the allocation formulas, we never get enough funding to allow for a comprehensive program. For example, fringe benefits and salary for a person to direct these programs would absorb all the funding available, with nothing left for program activities. This ESD absorbs the cost of providing my salary, but this is most unusual - most communities do not have an entity willing to support a drop-out prevention program with their own funds - designed especially for Indian children.

Our program starts with the basic premise that self-esteem in schools rests on academic equality. If we can prevent Indian children from being held back in grade, provide enough school clothes to prevent other children making fun of them, and be sure that they are tutored in the lessons they have missed while fishing, they will have earned self-esteem.

Though the national statistics for drop-out rates among Indian children still stands at somewhere around 48%, our local rate is remarkably lower. Our student population is normally anywhere from 63 to 80, varying from year to year, and the combination of JOM and Title IV last year was just over $17,000. Title IV's head-count in February of the year is never accurate in September, when school starts. Since the ESD started administering the funding, our average drop-out rate is two students a year. Some years we don't have ANY drop-outs, but it requires constant monitoring of their situations and any resulting problems in school.

Low funding prohibits the hiring of enough tutoring staff to do a first-rate job - While I fully realize that just increasing the budget is not a cure-all, it really would help if the formula considered low-population areas.

Fishing is not only a matter of subsistence to some of the families, it is a part of their religion. The Federal government has not been favorably notable in its keeping of treaties with the Indian tribes, and unfortunately, there are a lot of non-Indian families who resent what little the Indian students do receive in the way of school supplies, tutors, school clothing, cultural activities and other special attention to keep them in school. Therefore, there is a great deal of prejudice in this area directed toward our Indian families, which does not make it any easier for them to want to complete their education and make other career choices than fishing as their parents and ancestors have done. These students start school bright and interested - unfortunately, some of them will be labelled "Learning-Disabled" later on, and they are NOT. Some are Teacher-Disabled through prejudice, and if they do not have help to make up the school work they've missed, they become system-disabled, and lose the desire to graduate.

There probably always have been, and always will be, Indian fishermen who consider themselves above the law. So are there non-Indian fishermen who consider themselves above the law. There are also non-Indian students who will drop out because they are poor, or because of poor attendance. It just seems to me that we OWE it to our system of government to honor our treaties - to keep our word to the Indian tribes, and to also respect their culture and traditions which are so much a part of their heritage.

It is only fair that we show the tribes the respect we demand of them for OUR laws and ways.

Helen C. Roberts

HELEN C. ROBERTS
Coordinator, Indian Education

HCR:rs

170

# INDIAN FISHERIES ON THE COLUMBIA RIVER

by

David Alexis

January 1988

## INTRODUCTION

The purpose of this paper is to put into perspective the history of non-Indian contact and the results of that contact with Indian people who reside along the Columbia River in the Northwest United States. This is merely a summary that proceeds from initial contact of pre-development era (1850) through non-Indian usage of the fisheries through the David Sohappy, Sr. et al case that occured in Yakima tribal court in April of 1987. This documented journey will enable the reader to understand the consequence to the fishery resource and the Indian user of that resource in contact with the Euro-American.

## PRE DEVELOPMENT ERA

In 1792 Robert Gray was the first non-Indian to sail up the Columbia River and claim title to the territory in the name of the United States. In 1805 Lewis and Clark did likewise. Subsequent explorers and traders such as Hudson Bay Co. firmly established this newly acquired territory as rich in certain natural resources and ready to be exploited. From the early account of these Americans it has been theorized that as many as 50,000

Indians used the fishery resource with an annual catch of some 18,000,000 pounds. Estimates of population size have ranged from 8 to 35 million salmon produced annually by the Columbia River complex in the pre-development era. The early explorers and traders realized through their experience that fish and fishing were an important and integral aspect of Indian life.

The early use of fish in the pre-development era by the non-Indian was basically for self use as a result of trading with Indians. Indian people tended to be the fishers with the non-Indian being the recipient of the Indian fishing effort. An 1853 Olympia, Washington magazine exhorted the settlers to greater efforts saying, "what little has been done in the business in securing the salmon, has been done solely by the Indians."

The system of bartering between tribes and non-Indians have been well established in this time period.

The most devastating aspects of contact with the non-Indian was the introduction of disease, such as smallpox, measles and a malarial disease known at the time as ague. Estimates have suggested that as many as nine-tenths of the estimated 50,000 Indians previously inhabiting the area were decimated by these diseases from non-Indian contact to 1850. In other words from 50,000 Indians utilizing the fishery resource at an average use of 18,000,000 pounds per year to 5,000 Indians taking an unknown quantity while hampered by encroaching development and other non-Indian influences. One must remember that Indians were the fishers during this time period and essentially provided for all territorial consumption and export of salted fish to other parts of the world by the non-Indian.

## 1850 THE DEVELOPMENT ERA BEGINS

In 1855 treaties between the United States and Indian Tribes in the Pacific Northwest were accomplished. One of the most important considerations observed in these documents was that rights were reserved to fish at all usual and accustomed places whether they be on or off the reservations. The fishing lifestyle was paramount to Indian people. At the same time the treaties were signed non-Indian fisheries began in earnest. By 1861 the non-Indian fishery began to take on the form of a major industrial endeavor. The first fish were salted and shipped to various world locations in barrels. In 1866 the first attempt to can salmon was under taken on the Columbia River. In 1883 43,000,000 pounds of salmon were harvested and that figure was never to be equaled. The large amounts of fish being caught were the results of "civilizations" viewing the fishery as an inexhaustable resource, improved canning methods and irreverance for fish and fishing by the non-Indian.

For thousands of years Indians have fished the Columbia River and other water ways in the Pacific Northwest. For thousands of years fish and fishing have been revered and respected by Indian people. Ceremony and spiritual beliefs have been connected with fish and fishing, and have been well documented by certain non-Indians such as Click Relander in his book Drummers and Dreamers. The federal courts have also indicated that fishing is important to Indian people. In United States vs Winans, Justice McKenna states "the right to resort to fishing places.... which were not muchless necessary to the existance of the Indians than the atmosphere they breathed." Breathing is very important to most people if one doesn't breath one dies. This quote by Justice McKenna illustrates the importance of fishing to Indian people. However there exists certain government agencies, organizations, and individuals who believe that Indians are not a sovereign people nor do they have reserved treaty rights. In the realm of reality treaty rights are not rights that were given to Indians by non-Indians but rather they were rights posessed by Indians that Indians did not want to surrender in the treaty making process. The state of Washington after its entrance into statehood in 1889 began issuing patents to land along the Columbia River. The resulting private ownership allowed the practice of preventing Indian people from fishing at their usual and accustomed places. United States vs Winans struck down this attempt to monopolize the fishery. In the Seufert Bros. vs United States decision of 1918 the court further went on to say that the treaties must be interpreted as construed by Indian people. After the supreme courts ruling in Winans the Washington courts, in direct opposition to the U.S. Supreme Court, decided in two cases (State v. Alexis, 1916 and State v. Towessnute, 1916) that Indians no longer had a right to fish outside of the reservations except as permitted by state law. Of course the supreme law of the land in the guise of the treaties of 1855 allowed for off-reservation fishing of Indians at usual and accustomed places. The state could not regulate the usual and accustomed places any more than they could regulate the reservations themselves. The attitude that has existed from statehood inception to the present by some in the state of Washington can best be summed up in the courts opinion in the Towessnute case.

> The premise of Indian sovereignty we reject. The treaty is not to be interpreted in that light. At no time did our ancestors in getting title to this continent ever regard the aborigines as other than mere occupants and incompetent occupants, of the soil. Any title that could be had from them was always disdained.... Only that title was esteemed that came from white men.
>
> The Indian was a child, and a dangerous child, of nature, to be both protected and restrained. In his nomadic life he was to be left, so long as civilization did not demand his region. When it did demand that region, he was allotted a more confined area with permanent subsistance.
>
> These arrangements were but the announcement of our benovelence which, notwithstanding our frequent frailities, has been continiously displayed. Neither Rome or segagious Britain ever delt more liberally with their subject races than we with these savage tribes, whom it was generally tempting and always easy to destroy and whom we have so often permitted to squander vast areas of fertile land before our eyes.

With these state courts and others encouraging this attitude, Indian fishing and traditional lifestyles have suffered onslaughts from all levels of governments in the executive, legislative and court systems that make up these governments.

During the development era, 1850 to present, the fisheries have suffered greatly. Construction of dams, agriculture, forestry practices, mining, grazing, urbanization, pollution and nuclear power has decimated the salmon runs. Overfishing has played an important role in the latter part of the past century up to the present. However the construction of dams is the main factor in the decline of salmon runs. Inadequate fish ladders and escapement procedures for both upstream and downstream migration has created a fish mortality rate of up to 75%. The creation of Grand Coulee Dam for irrigation and hydro power effectively eliminated over 1200 miles of salmon habitat in 1941. There are presently 58 hydropower dams and 78 multiple use dams in the Columbia River Basin. These multiple use dams also produce hydropower. These dam projects began in earnest in 1933. The estimates are that 5 to 11 million fish have been eliminated from the fish runs per year due to the existing 136 hydropower projects in the Columbia Basin. More evidence could be presented to illustrate that the salmon run decline is directly related to development of the Pacific Northwest and not Indian over fishing. However, the purpose of this paper was not to detail history but to present a flavor of history that has prevailed for Indian people since the onslaught of civilization. Indian people who fish on the Columbia River are the last to fish in the fisheries chain that begins in the Pacific Ocean. If all non-Indian commercial fishing is not regulated correctly, the resulting course of action has been to regulate Indian fishing for so called conservation purposes. In 1969, in Sohappy v. Smith, Federal Judge Belloni stated that the state could regulate tribes for conservation purposes only. Unfortunately the state could regulate the Indian fishery on a regular basis. Mismanagement of fisheries in the ocean and Columbia River Basin by Federal and State agencies called for conservation by the state on the upriver Indian fishery. In a letter from Secretary of Commerce Cecil D. Andrus in May 1980 to the National Oceanic and atmospheric administration, in regards to these unfair use of fisheries conservation, he states:

> "Justification for these kinds of federal expenditures require that the fisheries be managed prudently to produce long term benefits to the public. Clearly, the fishery should not be managed primarily for the gain of one user group. It is very difficult for this administration to justify salmon enhancement programs when our own management scheme continues to contribute to the depletion of the resource."

In 1980 the Northwest Power Act was passed. The resulting fish and wildlife ammendments of 1982 to the Northwest Power Act gave fish and wildlife the same priority as hydropower. Also in that time period the executive and judicial branches of the federal government recognized improper and unfair fisheries management practices. This signaled better days for fish but not necessarily for Indian fishermen. In 1981 with advocacy by Senator Slade Gorton from the state of Washington the Lacey Act Ammendments of 1981 were passed. In the legislative history emphasis was placed on the need for passage of this act to protect endangered species and stricter penalties for violation of the intent of the act.

To the Indian fishermen this meant a vilation of tribal law would increase the penalty upon conviction from a maximum of 6 months in a tribal jail, such as the Yakima Indian Nation Correctional facility, to 5 years imprisonment in a federal correctional facility with up to a $10,000 fine. In April 1981 a federal sting operation known as Salmon Scam began. Subsequent testimony in Yakima Indian Nation (YIN) tribal court has indicated that the scam was started in anticipation of passage of the Lacey Act. After the 14 month investagation concluded with the arrest of 75 Indian men, women and children certain revelations came to light. In the fall of 1981 local newspapers in Portland, Oregon had articles with headings such as "40,000 salmon 'mysteriously' disappear". In the June 17, 1982 edition of Commerce News an announcement was made of the arrests of Indian people, the 40,000 missing fish was used again. This edition was used to illustrate the need for the Salmon Scam sting operation. Wayne Lewis, Special Agent in charge of the National Marine Fisheries Northwest Law Enforcement said ".... the investigation verifies the position of the law enforcement officials that illegal fishing has been a major factor in the loss of adult salmon from the Columbia River". Unfortunately for Indian people the law enforcement arm of the National Marine Fisheries Service (NMFS) had disregarded studies made in the 1930's, 40's and 50's that illustrated the impact development had on fisheries. The problem with NMFS concept of Indian fishing was that the 40,000 missing fish did not disappear. Subsequent studies in 1982, 83 and 84 by NMFS scientific arm proved that the allegation of Indian poaching being the prime reason for missing fish was false. The entire premise for Salmon Scam was to stop large quantities of fish from disappearing as they passed through the Indian fishing zone during closed fishing seasons. Studies domonstrated that flouride emissions at John Day Dam and not Indian fishing was the cause for the missing fish. These flouride emissions disrupted the sense of smell of the salmon which guides them to their spawning grounds, and either caused them to spawn below the John Day Dam or wander around unable to penetrate the flouride emission plume and died without spawning.

The Salmon Scam trials proceeded and convictions of Indian people resulted in 1983. In July of 1986 the U.S. Supreme Court refused to hear the case on appeal and the sentences stood. On August 7, 1986, one day before 5 YIN members were to start serving federal sentences the YIN decided to bring to trial these 5 Indians in YIN tribal court and charge them with the violations of tribal law. The same violations that had already been tried in federal court. The YIN court procedures were delayed for over 8 months due to misguided judgement of tribal officials and the resultant transferrance of 3 of the defendants to federal officials. On April 13, 1987 the trial was held in YIN tribal court. The testimony can be best summed up by the judgements passed by the jury. David Sohappy, Sr. charged with 24 counts was found not guilty on all counts due to infringement on his religious freedom and entrapment by federal agents. The other four defendants, including his son David Sohappy, Jr. were not guilty on the charges against them for the same reasons. Today David Sohappy, Sr., David Sohappy, Jr., Wilbur Slockish and Leroy Yocash are in federal prison because of federal court decisions made in 1983. The same charges they were found innocent of in tribal court in 1987 they were found guilty of in 1983 federal court.

The sentences recieved were disproportionate to the crime. David Sohappy, Jr. recieved 5 years imprisonment for the sale of 15 fish with an additional 5 years probation for 13 fish. His father David Sohappy, Sr. with an extended family of 25 recieved 5 years for the sale of 175 fish which were sold but not necessarily valued at $5,010.00. Mathew McConville recieved 1 year for 21 fish. Leroy Yocash recieved 2 years for the sale of 76 fish. Wilbur Slockish recieved 3 Years for the sale of 62 salmon. This was as stated before a 14 month investigation.

A recent study was released by the Bureau of Justice Statistics. Out of 523,000 felony cases involving violation of federal law, a rate of 62% of people who were convicted only 36% served prison time. Only 33% of those convicted of violent crimes were sentenced to one year or more. These statistics are based on felony cases resolved in 1984. These figures alone indicate something seriously wrong in the sentencing and continued incarceration of the four remaining imprisoned Indians.

## CONCLUSION

This Salmon Scam investigation resulted in the conviction of not illegal poachers but Indian leaders on the Columbia River. Common sense would direct anyone to assume after studying the history of non-Indian and Indian use and the Salmon Scam that coincidence is not the reason that David Sohappy, Sr. his son, David Sohappy, Jr., Wilbur Slockish, Mathew McConville and Leroy Yocash recieved such sentences. Indian fishing has never been proven to be a detriment to the fishery resource. At the same time many studies have pointed the finger at mismanagement and improper planning in natural resource use as to the decline of fish runs and the inability of fish runs to increase. David Sohappy, Sr. and the other imprisoned Indians have followed the ways of their ancestors and are in federal prison as a result. Let us hope that certain misusers of the fishery resource do not follow the way of their ancestors and disregard proper management of the salmon fishery.

[INSERT DATE]

DRAFT

Gene Anderson, United States Attorney
Western District of Washington
Seattle, WA

Re: United States v Sohappy, et. al.

Dear Mr. Anderson:

At the request of the Yakima Indian Nation, ~~and other~~ we ~~interested parties, members of the United States Senate~~ have been asked to support requests for commutation of federal prison sentences received by David Sohappy, Sr., David Sohappy, Jr., Wilbur Slockish, Jr. and Leroy Yocash in connection with the so-called "Salmonscam" prosecutions handled by your office. The primary grounds for the request are two-fold: that the sentences received are disproportionate to those received by non-Indians prosecuted for fishing law violations, and the allegation that the Federal Parole Commission was supplied with inaccurate information regarding the specific level of economic injury occasioned by ther criminal conduct.

I am advised that ~~your~~ assistant, United States Attorney ~~Mr.~~ Stephen C. Schroeder, filed an affidavit in the federal proceedings which stated in part "As this court is well aware, the Office of the United States Attorney for the Western District of Washington has been very active in the enforcement of treaty fishing rights. Indeed, some two hundred thirty-five cases were prosecuted in this court during the latter part of 1979 and 1980, involving the enforcement of United States v. Washington. Prior to that, prosecutions were successfully pursued against a number of violations of the Court's orders." In order that I might compare the sentences received by the Indian defendants in United States v. Sohappy et. al. with the sentences meted out in the cases referred to in Mr,. Schroeder's affidavit, I would appreciate being supplied with the following information:

1) the length of sentences received by the twenty-five most severe violators of the court orders in United States v Washington;

2) the amount of time actually served in federal custody by each of the twenty-five offenders;

3) the approximate value of salmon involved in each prosecution;

In addition, I understand that the United States Parole Commission rated the offense severity of David Sohappy, Sr. and David Sohappy, Jr. on the assumption that their crimes involved over $100,000.00 in economic loss, and gave them thirty and twenty-four month minimum prison terms, in spite of the fact that both were acquitted on charges of conspiracy. I understand that the elder Sohappy was actually convicted of selling 317 salmon to federal agents, and his son was convicted of selling 28 fish. The Parole Commission's conclusions, apparently based upon information contained in pre-sentence reports by the Office of Probation and Parole in Tacoma, are consistent with a statement made by Mr. Schroeder in a front page article in The Oregonian on Sunday October 5, 1986, wherein he stated, "I can't think of anyone who ripped $100,000 from the public and didn't go to prison." I would appreciate receiving copies of the pre-sentence reports on these individuals, together with copies of any documentation provided by your office to the preparer of those reports.

Mr. Schroeder's affidavit also contains this representation: "The instant investigation was begun in anticipation of expected changes in the Lacey Act." I would appreciate being advised how your office could have known on April 13, 1981 that the Lacey Act amendments would become law in November of 1981, and further, what information was available to your office that would indicate that the Congress of the United States, in passing those amendments, intended that they be used in this manner.

~~It appears that a high level of cooperation and coordination between federal and state agencies went into the execution of the "Salmonscam" operation. Any communication between your office, the Washington State Department of Fisheries, the National Marine Fisheries Service, and the Office of former Senator Slade Gorton during the legislative progress of the Lacey Act would be of interest to me as well.~~

~~I~~ we look forward to hearing from you at your earliest convenience.

Very truly yours,

DANIEL K. INOUYE
United States Senator

Daniel J. Evans CAPS
United States Senator

~~TPK/bl~~

DRAFT

BROCK ADAMS
United States Senator

Warm Springs, Oregon 97761 / 503 553-1161

August 25, 1986

Hon. Jack Tanner
Judge, United States District Court
Western District of Washington
P. O. Box 1935
Tacoma, WA 98401

Re: United States v. Sohappy, et al., CR 82-51T
Defendants Bruce Jim, James Wolfe, Sr.,
and Douglas Palmer

Dear Judge Tanner:

Each of the above-named defendants in United States v. Sohappy, et al., is an enrolled member of The Confederated Tribes of the Warm Springs Reservation of Oregon. Each is presently serving a multi-year prison sentence in the federal correctional facility at Lompoc, California. As Chairman of the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon, I am writing to express the tribe's support for reduction or alteration of their sentences.

Until now, the Warm Springs tribe has chosen not to participate or to publicly express its views concerning the United States v. Sohappy proceedings. However, as I'm sure you recognize, important tribal interests are involved in this case.

Almost all of the charges against the Warm Springs fishermen grew out of the sale of spring chinook taken in lawful ceremonial gillnet fisheries authorized by the Warm Springs tribe. The ceremonial permits allow selected tribal fishermen to harvest a designated number of fish from the Columbia River and return those fish to the tribal locker for use in tribally approved ceremonies. Since the ceremonial fisheries are tribally authorized for the benefit of the tribe as a whole, abuses of ceremonial permits constitute crimes against the tribe itself. Thus, in United States v. Sohappy, the tribe itself can be said to be the victim of the criminal activity. Certainly, that should entitle the tribe to have its views heard with respect to the appropriate punishment for such activity.

Re: United States v. Sohappy, et al., CR 82-51T
Defendants Bruce Jim, James Wolfe, Sr.,
and Douglas Palmer

The tribe views violations of its ceremonial fishing procedures as serious offenses. Had the federal prosecutions of the Warm Springs fishermen under the Lacey Act been deferred in favor of tribal court prosecutions, we feel that all of the Warm Springs defendants would have been successfully prosecuted and appropriately punished within our criminal justice system. Each individual charge in tribal court could result in a six-month sentence and a $500 fine. In addition, each defendant could have his or her treaty fishing right withdrawn by the tribe as part of the punishment for violating tribal fishing laws. No other court has the authority to impose the latter penalty.

The tribe believes that the violations of tribal ceremonial fishing procedures at issue in United States v. Sohappy warrant punishment, but that the five-year sentence for Bruce Jim and the three-year sentences for James Wolfe, Sr., and Douglas Palmer are excessive and should be reduced or altered. All three men, who are fishermen by vocation, are the sole support of their families. These sentences, which are far longer than any other sentences we can recall for fishing violations by either Indians or non-Indians, are causing severe hardship on the spouses and children these men have left behind. Simply stated, it is the Warm Springs tribe's firm belief that the violations of Warm Springs tribal law for which these men have been convicted under the Lacey Act do not justify prison terms of five years and three years. We respectfully urge you to consider reducing these sentences.

The tribe's treaty-secured fishing right also gives the tribe a strong interest in the salmon resource itself. Any harm to the resource is a threat to our treaty right, regardless of whether the harm is caused by non-Indians or Indians. This is especially true of the spring chinook, which we value above all other species as the primary source of ceremonial and subsistence fish.

Although these men have been convicted of crimes against the tribe involving abuses of the ceremonial gillnet permits, the tribe does not believe that the resource itself was harmed by this activity. The spring chinook caught and sold to the federal undercover officers were intended to be caught pursuant to lawful tribal ceremonial permits. In other words, the crime was not the fishing; it was the disposition of the fish.

Re: United States v. Sohappy, et al., CR 82-51T
Defendants Bruce Jim, James Wolfe, Sr.,
and Douglas Palmer

Despite claims to the contrary, the Indian fishing activity involved in United States v. Sohappy was not the cause of the "missing fish" phenomena involving the 1981 and 1982 fall chinook runs (it is now well established that toxic chemical discharges from a Goldendale, Washington, aluminum plant caused the problem). Moreover, the recent very large returns of adult spring chinook from the 1981 and 1982 spring chinook brood stock show that Indian fishing during this time did not adversely affect the resource.

In summary, the Warm Springs tribe sees this as a situation where tribal fishermen were fishing lawfully pursuant to tribal ceremonial permits, but violated tribal law by selling the fish to non-Indians rather than delivering the catch to the tribe as required by tribal law. No ascertainable damage to the resource itself resulted from this activity. The victim of this activity, therefore, is not the resource, nor the other Indian and non-Indian fishing groups using this resource, but the Warm Springs tribe itself. It was the tribe, whose internal tribal laws were violated and whose needs for ceremonial and subsistence fish went unfulfilled as a result of the commercial sales to the non-Indian undercover officers. This activity merits punishment, we agree, but not five years and three years in a federal prison.

After considering our views as stated in this letter, we trust that you will give very careful consideration to the motions filed by the attorneys for each of the Warm Springs fishermen to reduce or alter their prison sentences. We believe that justice and fairness require favorable action on these motions. Should you wish to consider possible tribal court prosecutions, or incarceration in the tribal jail pursuant to the federal sentences, in connection with an order reducing the present sentences of these defendants, we would be happy to work with you to see that that is done.

Thank you very much.

Sincerely,

Zane Jackson

Zane Jackson, Chairman
Tribal Council

ob

[illegible] 4-23-87 3:47PM ; - - 9 202 371 1165→ 5098655121;# 2

APR 23 '87 18:43

P.2

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955

**CONFEDERATED TRIBES AND BANDS**
*Yakima Indian Nation*

POST OFFICE BOX 151
TOPPENISH, WASHINGTON 98948

GENERAL COUNCIL
TRIBAL COUNCIL

January 21, 1987

F. Henry Habicht II
Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice
Washington, D.C. 20503

Dear Mr. Habicht,

Relative to phone conversations and meetings which have recently taken place between representatives of the Justice Department and the Yakima Indian Nation and after further discussion with your designated staff regarding the release of the three Yakima tribal members presently incarcerated at Sandstone, we have gained a fuller understanding of the Justice Department's position on this matter. In order that there be no chance of misunderstanding, we want to summarize our proposal: our officers will take charge of Messrs. Sohappy, Sr., Sohappy, Jr. and McConville at Sandstone, maintain that guard throughout the Tribe's trial proceedings, and at the conclusion thereof, return them if requested to the facility in Minnesota.

As well, the Tribe is actively pursuing the fugitives Slockish and Yocash, and will turn them over to federal authorities, if requested, after tribal action against them. We trust this squarely meets the central concern raised in your January 16 letter, and look forward to your advice that our officers may escort the prisoners to the Reservation in the immediate future.

Sincerely,

Melvin Sampson
MELVIN SAMPSON, Chairman
Yakima Tribal Council

Philip W. Olney
PHILIP W. OLNEY, Chairman
Yakima General Council

THE WHITE HOUSE
WASHINGTON

February 10, 1987

Dear Mr. Sampson and Mr. Olney:

On behalf of the President, I would like to thank you for your recent correspondence regarding your letter to the Department of Justice.

I have forwarded a copy of your letter to the Intergovernmental Affairs Office at the Department of Justice for their consideration and direct reply. You should be hearing from them shortly.

I sincerely appreciate your bringing your concerns to the attention of the Administration.

Sincerely,

Cristena L Bach

Cristena L. Bach
Special Assistant to the President
for Intergovernmental Affairs

Mr. Melvin R. Sampson
Mr. Phillip W. Olney
Confederated Tribes and Bands
Yakima Indian Nation
Post Office Box 151
Toppenish, Washington 98948

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955

CONFEDERATED TRIBES AND BANDS
*Yakima Indian Nation*

POST OFFICE BOX 151
TOPPENISH, WASHINGTON 98948

GENERAL COUNCIL
TRIBAL COUNCIL

February 12, 1987

F. Henry Habicht II
Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Habicht:

During the last few weeks we have had additional productive meetings and discussions with your staff. I know that this matter has involved coordination with various offices within the Department of Justice, and with other federal agencies and branches of government. It appears that we have now reached a common understanding and that we may resolve this matter quickly. In this light, I thought it would be helpful to summarize our agreement in this letter.

We consider it vitally important to the effectiveness of our tribal fishery management scheme that the Tribe prosecute its members who violate fishery regulations. Not only does this punish wrongdoers, it serves as a strong deterrent to other potential violators. The Tribe has filed charges against five defendants involved in the federal prosecution (Sohappy, Sr., Sohappy, Jr., McConville, Slockish, and Yocash). It also has filed charges against four other tribal members for violations which tribal officials uncovered during the course of our own investigation. It is imperative that these prosecutions proceed expeditiously.

In order to reach this goal, the Tribe has agreed to take the following steps:

--Tribal officers will take charge of federal prisoners (Sohappy, Sr., Sohappy, Jr., and McConville) at the Sandstone facility;

--the Tribe will hold the federal prisoners in custody at all times and will return them to Sandstone when written notice is given by the Assistant Attorney General, Land and Natural Resources Division, to either the Tribal Council Chairman or the General Council Chairman;

--the Tribe will return the federal prisoners to Sandstone, if requested by federal authorities, regardless of the outcome of the trial;

- --the Tribe will use its best efforts to apprehend Slockish and Yocash, and will turn them over to federal authorities after tribal prosecution, if requested;

- --the Tribe will comply with the Bureau of Prisons Program Statement regarding transfer of inmates to state agents for production on state writs.

At our request the Yakima Tribal Court on February 10 issued a new writ of habeas corpus reflecting the tribal commitments embodied in this letter.

Additionally, during our conversations we have discussed several methods for obtaining evidence from the federal witnesses that will ensure their safety. We know that there are various acceptable methods that would not require their actual presence on the reservation during the Tribe's prosecution. You have discussed these with our tribal prosecutor. The Tribe will agree to whatever method you believe would be best suited to protecting the safety of the federal witnesses.

Our discussions concerning transfer of the federal prisoners have been extensive and candid. We greatly appreciate your efforts in assisting the Yakima Tribe in securing custody of these defendants for trial. We hope to hear from you in the very near future concerning the precise date and circumstances for release of the prisoners.

Sincerely,

Melvin R. Sampson

MELVIN R. SAMPSON, Chairman,
Yakima Tribal Council
on behalf of the Yakima
Indian Nation

Walter J. Speedis Vice-Chairman.

For PHILIP W. OLNEY, Chairman,
Yakima General Council
on behalf of the Yakima
Indian Nation

FEDERAL PUBLIC DEFENDER
WESTERN DISTRICT OF WASHINGTON

February 13, 1987

United States Parole Commission
Western Region
1301 Shoreway Road, 4th Floor
Belmont, CA 94002

To Whom It May Concern:

The following informational letter is sent to the United States Parole Commission to assist it in evaluating the parole eligibility of defendants convicted in the matter of United States v. David Sohappy, Sr., et al. CR82-51T. The case involved illegal fishing and resulted in conviction of several Native American Indians who were found guilty under the terms of the Lacey Act, 16 U.S.C. § 3372, et seq. Several of the defendants convicted received sentences which included terms of imprisonment. Because parole eligibility is premised, in part, upon the Parole Commission's assessment of the severity of the offense, this information is submitted to assist the Parole Commission in making that assessment.

This letter is submitted on behalf of all defendants whose parole eligibility may be effected by the Parole Commission's assessment of the offense severity. The letter is co-endorsed by Assistant United States Attorney Steven Schroeder who was in charge of the prosecution and Federal Public Defender, Thomas W. Hillier, II, who represented David Sohappy, Sr., lead defendant in the case. Value assessments submitted in this letter should be considered official and supersede any value assessments contained in presentence reports filed in connection with individual defendants.

By way of background, the indictment filed in this case was complex and contained many counts. The first count charged an overall conspiracy alleging that all of the defendants acted in concert in connection with the illegal fishing which was occurring on the Columbia River during the time frame set forth in the indictment. All defendants were acquitted of that conspiracy count.

Therefore, as a matter of law, individual defendants are not responsible for fish caught by other individual defendants. Principles of vicarious responsibility or joint and several liability, which attach to the law of conspiracy, are not applicable in this case.

We understand that the Parole Commission considers the "overall offense" when determining an individual's parole eligibility. In making that decision in this case, the Commission cannot consider the total value assigned to fish illegally caught and sold. This is so, because, as indicated above, the defendants were found not guilty of a criminal association or conspiracy as alleged by the government. The value to be assigned to the crime of each defendant must be assessed based upon the value of the fish contained in the counts of the indictment for which each individual defendant was convicted. Overall, fish valued at more than $150,000 were alleged to have been illegally caught and sold. We understand that the Parole Commission has erroneously considered that total amount in assigning a severity rating to this case. Again, that is inappropriate. In fact, David Sohappy, Sr., and his son David Sohappy, Jr., together sold fish in exchange for payments totaling $10,530. Bruce Jim was convicted of receiving $38,201 for fish he illegally caught and sold. No other defendant received more than $20,000 in payment for fish illegally caught. From the above, the following conclusions must follow. First, the offense in this case must not be graded as a category 5 when assessing severity level. Category 3 offenses involve property valued at more than $100,000 but less than $500,000. Category 4 offenses involve property valued at between $20,000 and $100,000. That category would be appropriate in setting the severity level in the case of Bruce Jim. No other defendant should be rated higher than a category 3. To find contrary to the information contained in this letter would be to penalize defendants for the acts of others who were found to be acting independently and not in criminal concert with each other. It is the position of the government and attorneys acting on behalf of the defendants that it would be unconstitutional for the Parole Commission to aggregate the value of the fish caught by each individual defendant in assessing the offense severity level in light of the fact that the defendants were found not guilty of criminal conspiracy. Again, this fundamentally sound principle should be considered official in connection with your determination of the aforementioned defendants' parole eligibility.

Very truly yours,

Thomas W. Hillier, II
Federal Public Defender

Stephen Schroeder
Stephan Schroeder
Assistant United States Attorney

TWH,II/SS:klb/S0140

statutory

|  | Sentence | 1/3 Minimum | Time Served |
|---|---|---|---|
| David Sohappy Sr. | 5 years | 20 months (30) | 10 months |
| David Sohappy Jr. | 5 years | 20 months (24) | 10 months |
| Matthew McConnville | 1 year | 4 months | 10 months |
| Wilbur Slockish | 3 years | 12 months | 2 months? |
| Leroy Yocash | 2 years | 8 months | 2 months? |

The above chart indicates the sentences received by the individuals. The general federal rule on sentencing requires that a defendant serve at least 1/3 of his sentence. The court will not entertain any motion for reduction made by the defendant at this point. Under Criminal Rule 35 defendants have 120 days to make such a request. All the defendants made such requests which were denied by Judge Tanner. The only avenues open are the ones discussed below.

Obviously there is only one defendant who has served his minimum time plus several months. In order to gain release of the other individuals, other treatment will have to be followed:

meeting w/ B.O.P. on procedure

1. 18 U.S.C. 4205(9): - Under this section the Bureau of Prisons may move the sentencing court to reduce a prisoner's minimum to the time he has already served, thereby allowing his release. The court has continuing jurisdiction to hear such a request if it is made by the Bureau of Prisons. It is discretionary with the Bureau of Prisons to make such a request. Also it is discretionary with the court as to whether to grant it. Judge Tanner has not been helpful in that regard.

2. Pardon: The power to pardon is held by the President of the United States under the Constitution, Article 2 Section 2, and he is represented by a special pardon attorney. Once again the pardon is totally discretionary with the United States. The pardon relieves the person from the legal consequences of a crime. This process will be the subject of much of our discussion.

3. Commutation of Sentence: This process is also part of the pardon process. It simply ends the sentence at the time commutation is granted. This is a part of the parole process. Commutation of the remaining sentences is probably the most saleable to federal authorities. It does not result in a full pardon, but does give the prisoners some relief from the remaining sentence. It involves only the discretion of the President or his representatives and is a place where the Tribe can exert some political pressure. The prisoners have already served substantial amounts of time and justice dictates that they be freed at this point. This issue presents problems with Yocash and Slockish as they have served very little of their minimum

time. Because of that I believe we should start with a request for full pardon of all individuals.

The request should be based on the following issues:

1. The only non Indian prosecuted in this case, Randy Marriot, had 50 counts against him, 47 of which were Lacey Act. He pled guilty to a mail fraud and all the others were dismissed. No other non Indian individuals have received charges close to the severity of the Sohappys, Slockish & Yocash.

2. The basic thrust of the Lacey Act is to protect endangered species from extinction. This is a valid purpose and serves a vital function in the environment. However, that was not the case in these prosecutions. The primary species caught were spring chinook for the 1982 run. While that run was low at 71,100 crossing Bonneville, the actions of the defendants did not in any way endanger the continuation of the spring chinook species. In fact the runs resulting from 1982 escapement were as follows:

a. 85 - 84,700
b. 86 - 120,600
c. 87 - 98,400

These numbers represent returns of 3, 4 and five year old spring chinook from the 1982 run. While these numbers are not as high as everyone desires, they are increases over 1982, reflecting that the defendants did not endanger the resource unduly.

3. This prosecution is different from the steelhead Lacey Act prosecution, where the issues dealt with are harvests of severely depleted animals by individuals having no special protected claim to any portion of that resource. In this action the defendants have a treaty protected right to harvest the salmon resource subject only to tightly restricted authority to regulate by non-Indians. In this action, these defendants sincerely believed they possessed a treaty reserved right to a share of this resource. David Sohappy Sr. holds a sincere belief that this is his right. This is not simply a "poaching" issue.

4. Indians may not be prosecuted without the showing of a conservation necessity by the government. The proof by the government on that issue at trial was tenuous at best, but the court bought it. The runs coming back from these runs in 3, 4 and 5 years belie the fact that the fishing depleted the resource.

5. If the resource was in danger of extinction, why did the government participate in farthering it. The government injected large sums of money into a poverty stricken Indian economy and

actively encouraged defendants to catch more and more fish. The government could have stopped with only a few "buys" and prevented any resource damage. Instead it actively encouraged it. This particpation by the government was used to build a "gross" case, which resulted at least in part in the heavy sentences, even though the convictions were for catching only a few fish.

6. The only other pending prosecution on salmon in the United States-Taiwan salmon laundering case involving millions of dollars is salmon taken illegally in ocean water by foreign fleets. Publicity on this case indicates it is being brought civilly only.

U.S. Department of Justice
Land and Natural Resources Division

Office of the Assistant Attorney General
Washington, D.C. 20530

February 13, 1987

Melvin R. Sampson, Chairman
Yakima Tribal Council
Philip W. Olney, Chairman
Yakima General Council
Yakima Indian Nation
Post Office Box 151
Toppenish, Washington 98948

Gentlemen:

Based upon the conditions agreed to by the Yakima Tribe as stated in your letter of February 12, 1987, the tribal writ of habeas corpus issued February 10, 1987, and my conversations with Chairman Sampson, we will release Messrs. Sohappy, Sr., Sohappy, Jr., and McConville to the custody of tribal officials for tribal prosecution. This is a very important test of the ability of our tribal and federal law enforcement communities to work smoothly and effectively together. We appreciate your good faith commitment to the success of this effort and will stay in close touch concerning the precise date for release of the prisoners.

Sincerely,

F. Henry Habicht II
Assistant Attorney General

DANIEL K. INOUYE, HAWAII, CHAIRMAN
DANIEL J. EVANS, WASHINGTON, VICE CHAIRMAN

JOHN MELCHER, MONTANA
DENNIS DeCONCINI, ARIZONA
QUENTIN N. BURDICK, NORTH DAKOTA
THOMAS A. DASCHLE, SOUTH DAKOTA

FRANK H. MURKOWSKI, ALASKA
JOHN McCAIN, ARIZONA

ALAN R. PARKER, STAFF DIRECTOR
PATRICIA M. ZELL, CHIEF COUNSEL
JOE MENTOR, JR., MINORITY COUNSEL

**United States Senate**
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

February 17, 1987

F. Henry Habicht II
Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Habicht:

I am writing to express my appreciation for your assistance in arranging the release to the custody of the Yakima Indian Nation of federal prisoners David Sohappy, Sr., David Sohappy, Jr., and Matthew McConville. I understand that the purpose of this arrangement is to allow the tribe to prosecute them for violation of tribal fishing regulations and that the tribe will return them if requested to federal custody at the conclusion of the tribal prosecution.

I would also like to commend to you the efforts of Donald Carr and James Kilbourne of your staff, and John Thomas of the Office of Legislative and Intergovernmental Affairs, Department of Justice. I am confident this problem would not have been resolved without their commitment to resolution and their sensitivity to the concerns of the Yakima Nation.

I remain committed to the concept of tribal self-regulation of fish and wildlife resources, consistent with treaty and statutory obligations. Consequently, I stand ready to offer whatever appropriate support I can to assist Indian tribes and Federal agencies in their efforts. I have discussed this matter with officials of the Yakima Indian Nation, and I am confident they will make every effort to cooperate with the Department of Justice in these and other prosecutions.

Please do not hestitate to contact me if I can be of further assistance.

Sincerely,

Daniel J. Evans

DANIEL J. EVANS
Vice-Chairman

cc: John R. Bolton
DJE/jm

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955

CONFEDERATED TRIBES AND BANDS
*Yakima Indian Nation*

POST OFFICE BOX 151
TOPPENISH, WASHINGTON 98948

GENERAL COUNCIL
TRIBAL COUNCIL

1986 MAR -4 AM 11: 28

~~Sa~~
Joe
* copy to Sara
* original to Bill

February 25, 1987

Honorable Daniel J. Evans
United States Senate
702 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Evans:

As you know, our efforts at securing the return of the Yakima tribal members who have been incarcerated in federal prison pursuant to the "Salmonscam" operation have been successful and on February 14, they were returned to our custody.

I think you realize the importance of the Yakima Indian Nation being able to prosecute its members who violate tribal law. We have had to fight for many years to ensure that our Treaty of 1855 is fully protected and adhered to. The highest courts of the United States have agreed and ruled that we are a "Self-Regulating Tribe."

It is absolutely vital that our self-regulating status is upheld by us exercising our jurisdictional responsibility over members of the Yakima Indian Nation. Self-regulation has been an on going process practiced by us, going back to the time when it was an unwritten law. This case conceivably represents a major step in demonstrating, not only our responsibility, but our capability in carrying out this regulatory process involving Tribal members who choose not to abide by Tribal law. We do not want our self-regulatory status to be jeopardized.

I want to thank you for your efforts, and for Joe Mentor's tireless efforts at helping us secure the return of these men for prosecution in Tribal court. There is no question but that you both played key roles in convincing the Justice Department that we should be allowed to prosecute these people. Your support for our Treaty is, as always, greatly appreciated.

Sincerely yours,

Melvin R Sampson

Melvin R. Sampson, Chairman,
Yakima Tribal Council

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955

CONFEDERATED TRIBES AND BANDS
*Yakima Indian Nation*

POST OFFICE BOX 151
TOPPENISH, WASHINGTON 98948

GENERAL COUNCIL
TRIBAL COUNCIL

April 30, 1967

The Honorable Ronald Reagan
President of the United States
The White House
Washington, DC

RE: Full Pardon of David Sohappy, Sr.; David Sohappy, Jr.; Matthew McConnville; Wilbur Slockish and Leroy Yocash

Dear Mr. President:

This letter is written by the Yakima Tribal Council and its General Council Officers, acting in their governmental capacity on behalf of the captioned enrolled members of the Yakima Indian Nation, to begin the pardon process. These individual members of the Yakima Indian-Nation were caught up in a Federal "Sting Operation" involving the Yakima Nation's Treaty secured fishing rights on the Columbia River. They were charged and convicted pursuant to the Lacey Act, 16 USC 3371, and received sentences ranging from one year to five years in the Federal Penitentiary. The primary basis of the Federal conviction was that the defendants had violated Tribal Law which were then made to be violations of Federal Law. The actual facts and circumstances will be set forth in detail in documents to follow.

Following the conviction and final appeal, the Yakima Nation charged these individuals with numerous counts of violation of Tribal fishing laws alleging many of the same facts and circumstances used as evidence in the federal prosecution.

This government, through the intervention of your office and government to government negotiation with the Justice Department, obtained custody of the individuals for purposes of Tribal prosecution. The Tribal prosecutor, unable to secure the presence of the actual Federal undercover agents involved, presented their previously recorded testimony at the trial. The trial lasted for two and one-half weeks. On April 29, 1967, a Tribal Jury returned a verdict of Not Guilt on the basis of entrapment. A copy of the Tribal Court orders of release from custody, indicating the entrapment finding. As a result of these verdicts, the Yakima Nation no longer has charges pending against these defendants, but retains them in custody in the Tribal jail under Federal detainer. In light of the entrapment finding by the Tribal jury, this government believes that its assistance in securing a pardon for these individuals is appropriate.

The United States released the individuals to Tribal custody pursuant to an agreement reflecting your policy of the United States government relations with Tribal governments as a sovereign to sovereign basis. The Yakima Indian Nation appreciates the recognition of this policy and considers the pardon process as an extension of it.

**U.S. Department of Justice**
Land and Natural Resources Division

Office of the Assistant Attorney General
*Washington, D.C. 20530*

RECEIVED
MAY 12 1987
MEL. R. SAMPSON
TRIBAL COUNCILMAN
YAKIMA INDIAN NATION

May 7, 1987

Melvin R. Sampson, Chairman
Yakima Tribal Council
Philip W. Olney, Chairman
Yakima General Council
Yakima Indian Nation
Post Office Box 151
Toppenish, Washington 98948

Gentlemen:

Pursuant to the request contained in your letter of February 12, 1987, the Federal government released to the Yakima Tribe three prisoners (David Sohappy, Sr., David Sohappy, Jr. and Matthew McConville) for tribal prosecution. We agreed with you that such prosecutions are vitally important to the effectiveness of your tribal fishery management scheme, and cooperated fully in facilitating this prosecution. Your letter of April 30, 1987, reports that the tribal court failed to convict these three individuals (as well as Wilbur Slockish and Leroy Yocash), and that the tribe no longer has any grounds for retaining them in custody. Although your letter indicates the intention to request pardons for all five prisoners, it does not state any reason why these five prisoners should remain in tribal custody during the process. Accordingly, I hereby request return of David Sohappy, Sr., David Sohappy, Jr. and Matthew McConville to Sandstone Federal Prison, and transfer of Wilbur Slockish and Leroy Yocash to a federal custody in Yakima for prison assignment, all in accordance with the terms of our agreement and the tribe's habeas corpus order.

The transfer of these prisoners to federal custody would not in any manner prejudice any request for pardon, clemency, reduction of sentence or any other avenue they may wish to pursue. Indeed, their presence in federal custody, in compliance with the terms of sentencing, will likely be a prerequisite to any avenue of relief they choose to pursue.

We would be happy to provide further information concerning these processes if you wish. I am pleased that this experiment in tribal - federal cooperation has worked so well and applaud your efforts and personal commitment to enforcement of appropriate fishing regulations. Your commitments and actions here can provide a basis for further tribal-federal cooperation in support of tribal governmental and law enforcement interests.

Sincerely,

F. Henry Habicht II
Assistant Attorney General

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955

CONFEDERATED TRIBES AND BANDS
*Yakima Indian Nation*

POST OFFICE BOX 151
TOPPENISH, WASHINGTON 98948

GENERAL COUNCIL
TRIBAL COUNCIL

May 12, 1987

Mr. Henry Habicht II
Assistant Attorney General
Constitution Avenue and Tenth Street N.W.
Washington, D. C. 20530

RE: David Sohappy Sr., David Sohappy, Jr., Matthew McConnville, Wilbur Slockish and Leroy Yocash

Dear Mr. Habicht:

We are in receipt of your letter of May 7, 1987, wherein you state:

> Your letter of April 30, 1987, reports that the Tribal court failed to convict these three individuals (as well as Wilbur Slockish and Leroy Yocash), and that the tribe no longer has any grounds for retaining them in custody. Although your letter indicates the intention to request pardons for all five prisoners, it does not state any reason why these five prisoners should remain in tribal custody during the process. Accordingly, I hereby request return of David Sohappy, Sr., David Sohappy, Jr. and Matthew McConnville to Sandstone Federal Prison, and transfer of Wilbur Slockish and Leroy Yocash to a federal custody in Yakima for prison assignment, all in accordance with the terms of our agreement and the tribe's habeas corpus order.

We are highly concerned that you have not addressed our request for a face to face, government to government meeting to discuss this most important issue. As our letter was addressed to the President, we request confirmation that your letter represents the position of the President pursuant to his government to government policy on Indian Affairs. Based upon the telephone contacts regarding your letter, we understood such a meeting would occur. You state that our letter does not address "any reason" why these individuals should remain in tribal custody. Quite frankly it was our intent to discuss these issues with you at our meeting(s).

We have concluded that our concerns cannot be adequately addressed by letter or telephone and accordingly, we request a face to face, government to government meeting(s) on this issue. As noted in our letter to the President of April 30, 1987, our basis for relief is as follows:

1. The misapplication of the Lacey Act to these defendants, as that Act was intended by Congress to act as a benefit to Indian people and was used to their detriment instead;

2. The length of the sentences imposed are grossly disproportionate to the crimes;

3. The severity of sentences given to Indian people convicted under the Lacey Act are grossly disproportionate to those given to non-Indian violators of that act;

4. That the Tribal jury found that the activities of Federal agents constituted entrapment of the individuals.

It is our position to retain these individuals in tribal custody during the discussions to resolve these issues. Briefly, the following are our reasons for retaining them:

1. Custody is custody. These individuals are presently in the tribal custody, the same as they would be in a federal institution. The Yakima Indian Nation has proven that it can adequately hold these individuals in custody, and can continue to do so;

2. It is necessary for adequate consultation with tribal representatives and attorneys handling this process. Placing them at Sandstone or other remote federal facilities will seriously impede that process;

3. Humanitarian reasons. Allowing them to be near their families, and to have access to traditional Indian foods;

4. Status of sentences;

5. At least three of these individuals have now been transported from jail to jail to jail. They should not be subjected to this treatment again while the government to government process proceeds, particularly in light of the fact that when the process is successful, the individuals should be at home for release purposes;

6. Transportation of these individuals from adequate tribal custody during the process serves no compelling federal purpose. Retention of tribal custody will not in any way prejudice the government's ability to fairly consider requests for pardon, clemency, reduction of sentence or any other avenues.

You note that this experiment in Tribal-Federal cooperation worked so well. . . ," implying that this process is no longer functioning, and that this was the first time this Nation exercised such authority. As you know the Yakima Indian Nation is a self-regulating Tribe and has exercised their jurisdiction for many years. This jurisdiction is based solely upon our Treaty as implemented by the Tribal Government. This is the sole basis for our government to government relationship with the United States. The Yakima Indian Nation believes that the government to government process continues, and our meeting is a logical continuance of that process. The Yakima Indian Nation looks forward to hearing from you concerning the meeting date(s).

Sincerely yours,

YAKIMA INDIAN NATION

Melvin R. Sampson

Melvin R. Sampson, Chairman
Yakima Tribal Council

Philip W. Olney

Philip W. Olney, Chairman
Yakima General Council

cc: Ronald Reagan
President of the United States

jws

**U.S. Department of Justice**
**Land and Natural Resources Division**

Office of the Assistant Attorney General
*Washington, D.C. 20530*

May 26, 1987

RECEIVED
JUN 1 1987
MELVIN SAMPSON
TRIBAL COUNCILMAN
YAKIMA INDIAN NATION

Melvin R. Sampson, Chairman
Yakima Tribal Council
Philip W. Olney, Chairman
Yakima General Council
Yakima Indian Nation
Post Office Box 151
Toppenish, Washington 98948

Gentlemen:

I have received your letter of May 12, 1987, and I wish to confirm that my letter of May 7, 1987 represents the position of the Federal government pursuant to the President's government-to-government policy on Indian Affairs. Please be advised that this matter has been reviewed thoroughly within the Federal government, and our position remains that your government must live up to its agreement contained in the letter of February 12, 1987 which you executed "on behalf of the Yakima Indian Nation" guaranteeing the return of the prisoners, following prosecution, upon our demand. These prisoners were released to tribal custody for the purpose of tribal prosecution. In return, your government very clearly promised in writing that:

> "The Tribe will hold the federal prisoners in custody at all times and will return them to Sandstone [prison] when written notice is given by the Assistant Attorney General, Land and Natural Resources Division, to either the Tribal Council Chairman or the General Council Chairman;
>
> The Tribe will return the Federal prisoners to Sandstone if requested by Federal authorities, regardless of the outcome of the trial;
>
> The Tribe will use its best efforts to apprehend Slockish and Yocash, and will turn them over to the federal authorities after tribal prosecution, if requested."

Accordingly, I reaffirm the request contained in my letter of May 7 for the return of David Sohappy, Sr., David Sohappy, Jr. and Matthew McConnville to Sandstone Federal Prison, and transfer of Wilbur Slockish and Leroy Yocash to federal custody in Yakima for prison assignment, all in accordance with the terms of our agreement and the Tribe's habeas corpus order.

In a very significant step, the United States has honored the Tribe's request to vindicate its law enforcement interests on the basis of the above-quoted written guarantees from the Yakima. Now that the tribal law enforcement process has run its course, the United States firmly believes that the Yakima must honor the Federal government's legal system and the conviction of these prisoners in Federal court. It is also most important to all parties involved in this matter that the Yakima Tribal government demonstrate that its promises, made in government-to-government negotiations, are reliable and that the Tribe will honor its commitments. After the Tribe has fulfilled its promise, the United States would be happy to discuss, on a government-to-government basis, all steps that can be taken to accommodate the concerns expressed in your letter of May 12.

Sincerely,

F. Henry Habicht II
Assistant Attorney General
Land and Natural Resources Division

ESTABLISHED BY THE
TREATY OF JUNE 9, 1855
CENTENNIAL JUNE 9, 1955

CONFEDERATED TRIBES AND BANDS
*Yakima Indian Nation*

POST OFFICE BOX 151
TOPPENISH, WASHINGTON 98948

GENERAL COUNCIL
TRIBAL COUNCIL

May 28, 1987

Mr. Henry Habicht, II
Assistant Attorney General
Constitution Avenue and 10th Street NW
Washington, D.C. 20530

Re: David Sohappy, Sr.; David Sohappy, Jr.; Matthew
McConnville; Wilbur Slockish; and LeRoy Yocash

Dear Mr. Habicht:

We are in receipt of telefax copy of your letter of May 26, 1987 addressed to Melvin Sampson and Philip Olney concerning the above captioned individuals. The Yakima Tribal Council met on Wednesday in an emergency session to discuss your letter and the position of the Justice Department in this matter. Once again the Tribal Council is very concerned that the United States will not meet with us prior to demanding the return of the prisoners. We believe the items set forth in our letter of May 12 as discussion items for such a meeting were and are crucial to resolution of the issues in this matter and the continuation of our government-to-government relationship. Unfortunately, the United States has chosen a different course.

After long and careful deliberation, the Yakima Tribal Council yesterday, by motion, took action regarding the issue of return of these individuals to custody of the United States. The Yakima Nation intends to continue its press for government-to-government discussions on this issue and in the interests of consistency with that government-to-government relationship, and in the interest of fostering better government-to-government relationships, not only for the Yakimas, but with Indian tribes throughout the United States, the Yakima Tribal Council is willing to return these individuals to federal custody, provided there is an understanding between the Yakima Indian Nation and the Federal Government as to several conditions. The Yakima Indian Nation realizes the content of our previous agreement, but in the best interests of justice and of all parties involved, requests that the United States consider the following, which are a part of the Tribal Council motion:

(1) That the United States agree to immediate face-to-face, government-to-government discussions on final disposition of the individual sentences. In those discussions the Treaty of June 9, 1855, 12 Stat. 951, based on the United States Constitution, be the recognized instrument of the discussions from this point forward, on the grounds that the Yakima Nation granted to the United States only those things specifically mentioned in the treaty and reserved unto themselves everything not mentioned;

(2) The President (or his delegate duly authorized in writing by the President) meet with the Yakima Nation to discuss the contents of our May 12, 1987 letter and the issues of pardons, clemency, or other sentence reduction procedures for these individuals, in order that we may continue our government-to-government relationship;

(3) That the five individuals, with the possible exception of any that are eligible for release at this time, be placed in custody in an institution within the state of Washington to allow communication with their counsel and tribal officials to continue;

(4) That any time spent in the tribal jail facilities be credited to good time on their federal sentences;

(5) With regard to Matthew McConnville, there is enclosed herewith a specific resolution requesting that Mr. McConnville be given an immediate consideration and release without the necessity of transfer to an additional facility;

(6) That the Helsinki Accords between Russia and the United States regarding treatment of indigenous people shall be utilized in our discussions and covenants of that agreement shall be complied with in the conduct of our government-to-government relationship.

We expect to immediately resume our government-to-government process. As time is of the essence, we expect to hear from you at the earliest possible convenience.

Sincerely,

YAKIMA INDIAN NATION

Melvin R Sampson

By Melvin R. Sampson, Chairman
Yakima Tribal Council

Philip W. Olney

By Philip W. Olney, Chairman
Yakima General Council

ls

CC: Mr. Ronald Reagan, President
United States of America

# RESOLUTION

WHEREAS, Matthew McConville received a one-year federal prison sentence as a result of his involvement in the "Salmonscam" proceedings, and

WHEREAS, Matthew McConville's minimum sentence under federal prison guidelines would have been approximately three months, and

WHEREAS, Matthew McConville has spent nearly ten months in federal and tribal custody, and

WHEREAS, Matthew McConville is presently residing in the custody of the Yakima Indian Nation in their tribal jail in Toppenish, Washington, close to his home and family, and

WHEREAS, justice and equity require that Matthew McConville be released from further custody without transfer to a distant federal facility.

NOW, THEREFORE, BE IT RESOLVED, that the Yakima Indian Nation Tribal Council, through this resolution, request that the Federal Government immediately review Matthew McConville's sentence and provide the process whereby Mr. McConville can be immediately released from custody without transfer outside the Yakima Valley.

DONE AND DATED on this 27th day of May, 1987, approved as part of the overall motion by the Yakima Tribal Council, with a quorum being present, at the Governmental Offices of the Confederated Tribes and Bands of the Yakima Indian Nation, Toppenish, Washington.

Melvin R Sampson
Melvin R. Sampson, Chairman
Yakima Tribal Council

ATTEST:

Virginia S Harrison
Virginia S. Harrison, Secretary
Yakima Tribal Council

480

[illegible]

CONFEDERATED TRIBES AND BANDS
*Yakima Indian Nation*

GENERAL COUNCIL
TRIBAL COUNCIL

[illegible]

June 3, 1987

Honorable Daniel K. Inouye, Chairman
Senate Select Committee on Indian Affairs
105 Russell Senate Office Building
Washington, D.C. 20510

As the elected leader of the Yakima Indian Nation's General Council, I have many concerns for our people, our treaty and our reservation.

On your most recent trip to the Pacific Northwest to visit firsthand, some of the Indian reservations that have ongoing problems, you stated that the Senate Select Committee on Indian Affairs would become involved in our problems and assist us.

If you have been keeping informed of the latest developments in our "Salmon Scam" issue, you are aware that the United States Justice Department has requested the return of our defendants. They in essence have said that they will not talk with any Yakima Indian Nation tribal officials about pardon or clemency until said defendants are back in federal custody. In our judicial process, our system found the defendants not guilty for reasons of entrapment. Therefore, we haven't any reason to keep the defendants incarcerated in our tribal jail facilities. But, fear releasing them because it is our contention that they would be apprehended by federal officers and transferred from one federal facility to another until the negative publicity quieted down. There are many more reasons that we have taken the action that we have, but the utmost concern in our minds is the assertion of our jurisdiction and sovereignty and the right to govern our own people.

At this time, I am asking you and your committee to investigate this "Salmon Scam" issue in its entirety and to assist us in securing the release of the defendants or to at least apply some positive pressure on our behalf. Also to thoroughly review and scrutinize the Black Bass Lacey Act and its amendments. Because we believe it was passed specifically to be used against our Indian people.

Enclosed you will find the latest copies of correspondence from the Justice Department and our last reply with the six conditions under which we would release the defendants to the federal authorities.

Please feel free to call or write, if you have any questions concerning this vitally important issue, because this issue will have either a positive or a negative affect on all aboriginal people living in the United States.

Respectfully,

Philip W. Olney

Philip W. Olney, Chairman
Yakima General Council

cc: Senator Edward Kennedy and Senator Mark Hatfield

XEROX TELECOPIER [illegible]

U.S. Department of Justice
Land and Natural Resources Division

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

June 4, 1987

**VIA TELEFAX AND MAIL**

Melvin R. Sampson, Chairman
Yakima Tribal Council
Philip W. Olney, Chairman
Yakima General Council
Yakima Indian Nation
Post Office Box 151
Toppenish, Washington 98948

Gentlemen:

Re: David Sohappy, Sr.; David Sohappy, Jr.; Matthew McConville; Leroy Yocash; and Wilbur Slockish.

This letter will confirm my telephone conversation with Chairman Sampson earlier today and the arrangements we have made with your law enforcement personnel for the transfer of the above-named defendants from tribal to federal custody. Tribal officers will deliver all five defendants by airplane today to Geiger Airfield in Spokane, Washington, where they will be met by officers from the U.S. Marshal's Service. On an interim basis, the Sohappys and McConville will be incarcerated at Geiger Camp, Spokane County Department of Corrections, Spokane, Washington, and Slockish and Yocash will be incarcerated at the Spokane County jail.

We plan to meet with you or your representatives in Washington, D.C., on Wednesday morning, June 10, 1987. We will be in communication with you in the immediate future to establish the details of an agenda for our meeting.

Sincerely,

Roger J. Marzulla
Roger J. Marzulla
Deputy Assistant Attorney General
Land & Natural Resources Division

NATIONAL CONGRESS OF AMERICAN INDIANS
Est 1944

**EXECUTIVE DIRECTOR**
Suzan Shown Harjo
*Cheyenne & Creek Nations*

**EXECUTIVE COMMITTEE**

**PRESIDENT**
Reuben A. Snake, Jr
*Winnebago Tribe*

**FIRST VICE PRESIDENT**
John F. Gonzales
*San Ildefonso Pueblo*

**RECORDING SECRETARY**
Faith Mayhew
*Klamath Tribe*

**TREASURER**
Buford L. Rolin
*Poarch Band of Creeks*

**AREA VICE PRESIDENTS**

**ABERDEEN AREA**
John W. Steele
*Oglala Sioux Tribe*

**ALBUQUERQUE AREA**
Stanley Paytiamo
*Pueblo De Acoma*

**ANADARKO AREA**
Juanita Ahtone
*Kiowa Tribe*

**BILLINGS AREA**
Burnett L. Whiteplume
*Northern Arapahoe Tribe*

**JUNEAU AREA**
Eric Morrison
*Tlingit*

**MINNEAPOLIS AREA**
Hillary Waukau
*Menominee Tribe*

**MUSKOGEE AREA**
Pamela Iron
*Cherokee Nation*

**NORTHEASTERN AREA**
Rovena Abrams
*Seneca Nation*

**PHOENIX AREA**
Thomas R. White
*Gila River Indian Community*

**PORTLAND AREA**
Allen V. Pinkham, Sr
*Nez Perce Tribe*

**SACRAMENTO AREA**
Denis Turner
*Rincon Band of Luiseno*

**SOUTHEASTERN AREA**
Billy Cypress
*Miccosukee Tribe*

June 9, 1987

The Honorable Ronald Reagan
The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The National Congress of American Indians, the leading national organization serving the interests of American Indian and Alaska Native governments and people, supports the request of the Yakima Indian Nation that pardons be granted for Yakima citizens David Sohappy, Sr., David Sohappy, Jr., Matthew McConnville, Wilbur Slockish and Leroy Yocash and that they be permitted to remain in Yakima territory during the pardon process, rather than be returned to the United States. The issuance of pardons and the approval of the request for continuing Yakima jurisdiction at this time would respect the government-to-government relationship articulated in your 1983 Indian Policy Statement and the long-established principle of comity between governmental judicial systems.

These five Yakima citizens were convicted in federal court on charges of illegally selling 507 salmon. The convictions were made pursuant to the Lacey Act, 16 U.S.C., 3371, and the primary basis of the federal conviction was violation of tribal law. They received prison sentences ranging from one to five years. One of the Yakima men received a five-year sentence for selling 28 fish. These sentences are far more severe than non-Indians have received under the Lacey Act. One of the men has served ten months of his twelve-month federal sentence. It is our opinion that they already have served more time than they should have.

The five Yakima citizens were tried in Yakima Tribal Court following their federal trials, and were found innocent by reason of entrapment. It was also found that their rights to free exercise of religion under federal and tribal law were violated. We note that the federal undercover agents refused to appear in tribal court, but the testimony they gave in federal court was included in the court proceedings. We also note that Oregon state police did cooperate with and participate in the Yakima legal proceedings.

The individuals in question are now in the Yakima jail, even though they are innocent under Yakima law. As indicated in the April 30 Yakima Nation letter to you, the promise of the Yakima Tribal Council Chairman and the Yakima General Council Chairman is to keep them in the Yakima jail during the pardon proceedings. Yakima officials are meeting this week with your Justice Department officials regarding this matter, and we urge the full policy involvement of the White House in each step of these government-to-government meetings.

Finally, we would point out that the individuals are just as incarcerated in tribal jail as they would be in federal jail. However, incarceration in tribal jail during the pardon process would respect tribal sovereignty and the United States' government-to-government policy concerning Indian nations, while transference to federal jail would violate these important principles. Further, there is a need for the Yakima citizens to remain in Yakima territory in order to consult with Yakima officials and their attorney, as well as a need to be with their families. In the humanitarian interest, these needs must be considered seriously.

In fairness to the Yakima Indian Nation and to David Sohappy, Sr., David Sohappy, Jr., Matthew McConnville, Wilbur Slockish and Leroy Yocash, we urge full White House involvement in the process for evaluating the pardon and jurisdication requests, which we believe you will find compelling reasons to grant.

Sincerely,

Suzan Shown Harjo
Executive Director

cc: Henry Habicht
Assistant Attorney General
U.S. Department of Justice

Melvin R. Sampson, Chairman
Yakima Tribal Council
Yakima Indian Nation

Philip W. Olney, Chairman
Yakima General Council
Yakima Indian Nation

[illegible] Developed by [illegible] Washington Hospital Council

**INSTRUCTIONS:**

1. Arrange for physical therapy at Deaconess every day for one week, then as Physical Therapy Department directs.
2. Discharge patient to prison officials only.
3. Discharge medications:
   Aspirin 1 PO b.i.d.
   Diabeta 2.5 mg PO q a.m.
4. Follow up at Toppenish Clinic in two weeks and this will be with Dr. Hidaka.

**DIAGNOSIS:**

1. Limited left sided CVA with brachial syndrome.
2. Type II diabetes mellitus.

**HOSPITAL COURSE:** The patient was admitted on 8/28/87, suffering from left arm and hand paralysis of progressive three day onset. He was admitted and found to have sensation in the left arm and isolated motor deficit in the more distal muscle groups including the hands and forearm. The patient did have some strength in the biceps in the left arm but much reduced compared to the right. The patient did have ability to use the muscles in the rotator cuff group. The patient's vitals were stable and the patient was not hypertensive. There were no other neurological deficits noted except a questionable slight weakness in the left leg when compared to the right. The patient also had some difficulty with heel to toe gait. His lab showed a hemoglobin on admission of 15.0, hematocrit of 43.8, sodium of 138, potassium 3.7, chloride 108, bicarb of 23.7. Creatinine was 1.0 and BUN 33. Glucose was 155. CT of the head was negative. This exam was done without contrast.

The initial impression was a CVA of the right middle cerebral artery distribution producing a limited paralysis called the brachial syndrome. This was thought to be most likely due to embolic phenomenon from the carotid arteries. There was no evidence of cardiac arrhythmia or evidence of valvular disease. There was no also no evidence to lead us to believe that it was infectious emboli from the heart as there was no fever. At the time the patient was stable and it was thought the patient should be observed in case this lesion slowly progressed to involve more of the left side. The patient was admitted and neuro checks were conducted q 2 hours to follow any progression that might occur. The patient remained stable without progression of his neurologic symptoms and improved over the course of the hospitalization so that on discharge he had a little bit more use of the biceps groups and a little bit of pronation, supination. He still had the use of the rotator cuff but could not voluntarily move the wrists or fingers. A Doppler study of the carotids was conducted to rule out the carotids as the cause for the emboli and it was shown that there was a 16 to 49 percent diameter reduction in the right internal and left internal carotid arteries. It was also seen that both vessels were very tortuous. The patient was started on b.i.d. aspirin therapy and also placed on his normal regimen of diabeta 2.5 mg per day and followed for any evidence of hypertension or progression of neurologic deficit. Blood glucose was also followed. At the time of discharge the patient was in stable condition with some improvement in his neurologic deficit in the left arm and no progression of neurologic problems in the lower extremity on the left. His blood sugar was controlled at approximately 120 and his blood pressure remained controlled throughout the hospitalization

CONTINUED...

HOSPITAL: DEACONESS MEDICAL CENTER

SOHAPPY, DAVID
J. Benson, M.D.
MR: 311509

ADMIT: 8/28/87
DISM: 8/31/87

## DISCHARGE SUMMARY

[illegible]

(23501)

without therapy.

**DISCUSSION:** It is the medical staff's recommendation that this patient be sent home to be with his family and with his congregation of the feather religion. There is therapy with this religion that he believes will help him and certainly not contraindicated medically. It is also felt that he should have Physical Therapy see him once a day for at least a week and preferably two weeks to help with regaining function of the left arm and hand. It is also felt that he should be followed up in the Toppenish Clinic, and to do this in approximately two weeks from discharge from this hospital. Althought he medical staff does feel that outpatient management of this problem outside of the prison would be more beneficial for this patient because of psychosocial, religious and therapeutic reasons, it is not contraindicated to have the patient obtain physical therapy while incarcerated in the institution.

Mark Leonard M.D.
Mark Leonard, M.D., Resident
for Judy Benson, M.D.

Judy Benson

8/31/87
8/31/87gs

cc: Al Brodersen, M.D.
Dr. Hidaka/Toppenish Clinic
Bureau of Prisons
Dr. Tom Keefe/Toppenish Clinic

A 6 The Seattle Times Monday, September 7, 1987

## EDITORIALS

**BOOST FROM INOUYE**

# 'Salmonscam' sentence commutations in order

DAVID Sohappy Sr., his son, and two other Yakima Indians in federal prisons for convictions in the "Salmonscam" illegal-fishing case are paying an inordinately heavy price for their much-publicized offenses.

The petitions for presidential commutation of the sentences of David Sohappy Sr. and Jr., Wilbur Slockish and Leroy Yocash should be granted — if for no other reason than the disproportionality of their sentences.

Consider: The younger Sohappy's five-year sentence was the result of selling 28 illegal salmon to government "sting" operatives.

Also, the senior Sohappy, 62, recently suffered a stroke in federal custody in Spokane. A petition for a medical furlough was turned down. Along with the disproportionality arguments, the commutations are sought on humanitarian grounds.

When Daniel Inouye, D-Hawaii, chairman of the Senate Select Committee on Indian Affairs, was in Seattle last week, he summed up their situation succinctly: "Others in the past have been pardoned for worse offenses."

Inouye has written directly to Howard Baker, President Reagan's chief of staff, saying: "I believe that their petition for a commutation of sentence has merit, and I am sure that when you look into the matter you will agree that simple justice demands an expeditious response to the Yakima Indian Nation."

The celebrated case, which has spawned "Free David Sohappy" bumper stickers, holds many of the complexities of treaty-rights struggles between Indians and state and federal governments.

That argument also is made by Inouye in his letter to Baker: "You should know that this cause has been followed closely by other Indian tribes who feel that the integrity of our judicial system, and the longstanding government-to-government relationship between their tribes and the U.S. government, are being tested by this case."

The four Yakima Indians, found innocent in Yakima tribal court but guilty in U.S. District Court in California, are not considered dangerous. They have paid their debt. Nothing more is being served by their imprisonment.

---

YAKIMA HERALD-REPUBLIC, SEPTEMBER 2, 1987
EDITORIAL PAGE

# Salmonscam over

If for no other reason than humanitarian, President Reagan should approve the request of Sen. Daniel Inouye, D-Hawaii, that the sentences of five Yakima Indians convicted in the so-called "Salmonscam" case be commuted.

The real legal issues involved in the illegal fish selling episode have long since been blurred by politics. The Yakima Indian Nation has locked horns with the federal government over who has jurisdiction — with the tribal court acquitting the five while a federal court convicted them and sentenced them to prison. That jurisdictional war has long since clouded the crimes' severity.

An executive branch decision in favor of the convicted Indian fishermen would reinforce the primal character of the relationship represented by the 1855 treaty between the Yakima Indian Nation and the United States of America.

Certainly the sorry odyssey of musical prisons, in which the men have been regularly shipped from one federal penitentiary to another, borders on cruel and unusual punishment in itself. Finally, the health of David Sohappy Sr. is now a factor after he suffered a stroke in prison.

The whole Salmonscam case has been a sad commentary on how political considerations can so greatly overshadow legal ones. Frankly, the Salmonscam five have paid their debt to society and there's nothing more to be gained by further confinement in federal prison.

## SALMONSCAM DEFENDANTS BIOGRAPHICAL INFORMATION

Leroy Yocash is 47 years old, and is the grandson of Yocash Charlie, the late chief of the White Swan Band of Yakima Indians. Leroy began fishing the Columbia River at his family's hereditary site at Celilo Falls in 1950, and was 17 when the site was destroyed in 1957 to make way for the Dalles Dam. Mr. Yocash served in the United States Army from June of 1966 until March 1971 and was stationed in Korea. He was originally charged with being a part of the "Salmonscam" conspiracy, and with four additional Lacey Act violations alleged to have occurred in the spring of 1982 at Celilo Village, Oregon. Mr. Yocash waived his constitutional right to a trial, upon the federal government's promise to seek probation if the court's reading of a portion of the transcript of the Sohappy trial resulted in a conviction. The court found Mr. Yocash guilty of one Lacey Act violation occurring May 3, 1982, when Leroy Yocash sold 76 salmon weighing 1,065 pounds, and 2 steelhead weighing 10 pounds to the federal undercover agents. He received $2,170.00 in the transaction, and was sentenced by the court to serve two years in prison. Since April of this year, Mr. Yocash has been incarcerated in the Yakima County jail, the Yakima Tribal jail, and federal institutions in El Reno, Oklahoma, Phoenix, Arizona, and LaTuna, Texas, where he is currently being housed on the prison's minimum security honor farm. Like the other "Salmonscam" defendants, Mr. Yocash has been a model prisoner.

Wilbur Slockish, Jr. is a member of the Klikitat Band of Yakimas, and the name "Slackish" is one of the fourteen signatures that appears on the treaty between the United States of America and the Confederated Tribes and Bands of the Yakima Indian Nation signed in June of 1855. Mr. Slockish's father is a federal employee on the Yakima Indian Reservation, and is also the hereditary chief of the Klikitat Indians. From the time of the treaty signing to the present day, members of the Slockish family have continued to fish in their traditional manner, and have frequently paid a heavy price for maintainig their tribal customs. Shortly after being discharged from the United States Army where he saw action in the Philippines in World War II, Wilbur Slockish, Sr. was arrested and jailed by Klikitat County authorities for violating Washington state regulations by placing a net in his traditional location along the Klikitat, a tributary of the Columbia River. His brother James Slockish, who was decorated for combat service in Europe, and served as a prisoner of war in Germany, had similar charges brought against him by state authorities.

Wilbur Slockish, Jr. and his wife Suzie Slockish were both among the nineteen invividuals indicted by the federal government in the "Salmonscam" investigation. Mrs. Slockish, a member of the Warm Springs Tribe of Oregon, was placed on five years probation husband is in prison. Mr. Slockish enlisted in the United States Marine Corps in 1966, but was discharged because of the large number of dependents at home. Wilbur Slockish, Jr. was indicted for conspiracy and four substantive Lacey Act violations, and his case disposition was similar to that of Mr. Yocash: after receiving the assurance that the federal government would recommend probation, Mr. Slockish waived his right to trial by jury, and consented to a reading of a portion of the Sohappy trial record. The District Court found him guilty of one felony violation occurring April 28, 1982 at Celilo for the sale of 62 salmon weighing 790 pounds and 1 steelhead weighing 8 pounds, for which he was paid $1,592.00 by federal agents. Mr. Slockish was sentenced to three years in federal prison, and has been in custody in the Yakima Tribal jail facility,***, since surrendering to tribal authorities shortly before the tribal court trial began on April 13, 1987.

David Sohappy, Jr. is 29 years old, and has lived with his parents David and Myra Sohappy at Cooks Landing Washington for his entire life. David. Jr. was born in 1958, one year after the flooding of Celilo Falls, the greatest fishing grounds on the North American continent. David and his wife, a member of the Muckleshoot Tribe from the Puget Sound region, have two small children. David Sohappy, Jr. was alleged to be a leader of the conspiracy charged in Count I of the federal indictment, along with his father and mother. David Jr. faced trial with his father in Los Angeles, California, after concerns were raised about the defendants' ability to find a fair and impartial jury in the State of Washington. The jury found the Sohappys not guilty of conspiracy, and found David Jr. not guilty of three Lacey Act violations alleged to have occurred on March 18, April 17, and March 30, 1982. Interestingly, the jury's not guilty findings involving the March 18 and April 17 Lacey Act violations dealt solely with allegations of violation of the laws of the Yakima Indian Nation. David Jr. was, however, convicted of two Lacey Act violations occurring on April 4, 1982 concerning the sale of 8 salmon weighing 112 pounds and seven steelhead weighing 55 pounds for $400.00, and on April 5, 1982 involving 9 salmon weighing 115 pounds and 4 steelhead weighing 31 pounds for 465.00. Selling $865.00 worth of salmon and steelhead to federal agents netted David Sohappy, Jr. a five year federal prison sentence, for which the U.S. Parole Commission has set a 24 month minimum term.

David Sohappy, Jr. has been in custody since August 1986, and accompanied his father on a cross country odyssey that took him from the Yakima tribal facility to federal institutions in California, Oklahoma, Kansas, and Minnesota. He is currently being held at the Geiger Corrections Facility in Spokane, Washington, where his conduct has been described as "exemplary" by prison officials.

David Sohappy, Sr. is a 62 year old fishing rights activist whose federal lawsuit Sohappy v Smith [1] led to an eventual

## DECLARATION

WE ARE CITIZENS OF THE YAKIMA INDIAN NATION. WE ACKNOWLEDGE THAT, AS SUCH, AND CONSISTENT WITH OUR RIGHTS UNDER THE TREATY WITH THE YAKIMAS OF 1855, WE ARE OBLIGATED TO ABIDE BY THE LAWS APPLICABLE TO YAKIMA INDIAN FISHERMEN.

DATED THIS 10th DAY OF FEBRUARY, 1988.

David Sohappy Sr.
DAVID SOHAPPY, SR.

David W Sohappy Jr.
DAVID SOHAPPY, JR.

THIS DECLARATION SIGNED IN THE PRESENCE OF THE WITNESSES WHOSE SIGNATURES ARE AFFIXED HERETO.

PHILIP W. OLNEY, CHAIRMAN
YAKIMA GENERAL COUNCIL

Thomas P Keefe
THOMAS PATRICK KEEFE, JR.
ATTORNEY AT LAW

Joe Mentor, Jr.
JOE MENTOR, JR.
MINORITY COUNSEL
UNITED STATES SENATE, SELECT
COMMITTEE ON INDIAN AFAIRS

STATUS OF DEFENDANTS

| DEFENDANT | CHARGES (No. of Fish) | TIME SERVED (Custody Date) | PAROLE DATE | STATUTORY 1/3 minimum (Release Date) | FULL SENTENCE (Release) |
|---|---|---|---|---|---|
| David Sohappy Sr. | 295 | 9/18/86 | 3/89 | 20 Months | 5 years<br>(9/91) |
| David Sohappy Jr. | 28 | 9/18/86 | 9/89 | 20 Months | 5 years<br>(9/91 |
| Leroy Yocash | 78 | 4/6/87 |  | 8 Months | 2 years<br>(4/89) |
| Wilbur Slockish | 64 | 4/6/87 |  | 12 Months | 3 years<br>(4/90) |
| Matthew McConville* | 21 | 9/18/86 | 8/87 |  | 1 year |

*Released 7/87

**Thomas Patrick Keefe, Jr.**
**Attorney at Law**

123 Third Avenue South
P.O. Box 4447
Seattle, Washington 98104
(206) 447-9546

June 23, 1987

Honorable Ronald Reagan
President of the United States of America
c/o Pardon Attorney
Department of Justice
Washington, D.C. 20530

Re: David Sohappy, Sr.
David Sohappy, Jr.
Wilbur Slockish
Leroy Yocash

Dear Mr. President:

I am pleased to submit for your consideration, under your constitutional authority, the attached petitions of the above-named individuals for commutation of federal prison sentences resulting from their convictions under the Lacey Act Amendments of 1981. These individuals were acquitted in the court of the Yakima Indian Nation on April 29, 1987 for any allegation of wrongdoing under tribal law in this matter. Their federal convictions were the result of an undercover federal and state "sting" operation conducted along the Columbia River in 1981 and 1982.

Because of the improper activities of Justice Department officials from the Land and Natural Resources Division, as well as the actions and statements of staff of the United States Attorney for the Western District of Washington, I hope that you will consider assigning an individual who enjoys your full confidence to investigate this entire matter and to report back to you. It is clear that David Sohappy, Sr., a sixty-two year old spiritual leader of the Yakima Indian Nation was singled out for prosecution under the Lacey Act many months before it was signed into law. The actions of Washington State Department of Fisheries officials, together with agents of the National Marine Fisheries Service, should be fully examined for possible civil and criminal violations of the civil rights of these treaty Indians. The sentences imposed in this case are grossly disproportionate to the sentences given to non-Indians who violate state fishing laws in Washington State.

The eminent legal scholar Felix S. Cohen once stated, "Like the miner's canary, the Indian marks the shifts from fresh air to

Copies to:
- Tribal Council
- Philip Olney
- Toni Weaver,
- George Waters

Mel

**U.S. Department of Justice**

**Federal Bureau of Prisons**

*Office of the Director*

*Washington, DC 20534*

RECEIVED
JUL 13 1987

Joe FYI - George
P.S. Mel has been trying to reach you -

Mr. Melvin R. Sampson, Chairman
Yakima Tribal Council
Confederated Tribes and Bands
Yakima Indian Nation
Post Office Box 151
Toppenish, Washington 98948

Dear Mr. Sampson:

This is in response to your June 18, 1987, correspondence concerning aspects of the incarceration of two of the members of your tribe. You have requested that these two individuals, Leroy Yocash and Wilbur Slockish, be housed in the Tribal Jail instead of being incarcerated in a federal facility.

Normally, the Bureau of Prisons only contracts with state and local facilities for incarceration of those individuals who are serving short term sentences or whose needs cannot be met in the federal system. We consider a variety of management variables prior to making designations of those inmates sentenced to the custody of the Attorney General. Our goal is to place offenders in the least restrictive environment which meets their security and program requirements and is as close to their homes as feasible.

We have thoroughly reviewed your request for establishing a contract with the Tribal Jail and believe it would be inappropriate in the case of Mr. Yocash and Mr. Slockish. They are serving sentences of two years and three years, respectively, and do not meet the criteria of a short term offender. Their program needs can be met adequately in federal facilities. Further, it will be in Mr. Yocash's and Mr. Slockish's best interest to receive a federal designation so that they might meet with the U. S. Parole Commission for parole consideration. When their final release dates are established, they could be considered for redesignation to the Geiger Camp Facility. Finally, placement at a federal institution would also allow for these individuals to display a degree of responsibility since they initially failed to voluntarily surrender to the Federal Prison Camp at Lompoc, California.

Therefore, we have designated Mr. Yocash to the Federal Correctional Institution, La Tuna, Texas and Mr. Slockish to the Federal Correctional Institution, Sandstone, Minnesota. Both of these institutions can meet the dietary, religious, education and medical needs of Mr. Yocash and Mr. Slockish.

We regret that our response cannot be more favorable at this time. If we can be of further assistance, do not hesitate to contact us.

Sincerely,

J. MICHAEL QUINLAN
Director

**Thomas Patrick Keefe, Jr.**
**Attorney at Law**

123 Third Avenue South
P.O. Box 4447
Seattle, Washington 98104
(206) 447-9546

July 14, 1987

David C. Stephenson, Pardon Attorney
United States Department of Justice
Washington, D.C. 20530

Re: David Sohappy, Sr.
David Sohappy, Jr.
Wilbur Slockish, Jr.
Leroy Yocash

Dear Mr. Stephenson:

Thank you for your letter of July 6, 1987 in reference to the request for commutation of sentences for the above-named individuals. I sincerely hope you are prepared to conduct the type of extensive investigation needed to provide President Reagan with an adequate basis for making an informed decision on this request. Simply stated, my clients were the victims of a "federalization" of the harrassment of Indian treaty fishermen that has been ongoing in the State of Washington since shortly after statehood.

I hope you will review Chapter 3 of *Indian Tribes: A Continuing Quest for Survival; A Report of the United States Commission on Civil Rights* issued in June 1981, almost two months after the federal action which led to my clients convictions was commenced. In addition to providing a thorough background briefing on the issue of treaty fishing rights, the report contains the following findings:

1. Indian tribes have been in conflict with the States over fishing rights throughout this century.
2. The Federal Government as guarantor of Indian fishing rights has not effectively protected and assured those rights.
3. Throughout this century, the State of Washington has utilized its governmental authority in such a manner as to deprive Indians of their fishing rights.
4. Indian tribes have been blamed erroneously for the crisis concerning the scarcity of fish.
5. The fishing rights conflict, which is a dispute over property rights, has racial dimensions.
6. The Federal Government has played the following contradictory roles in the fishing conflict:
    * counsel for tribes in much of the litigation;
    * mediator in the fishing crisis through the establishment of a Federal task force;
    * regulator of the fishery; and
    * financer of State fishery programs.

7. By establishing a task force designed to renegotiate treaty rights, the United States failed to act as trustee, operated with a substantial conflict of interest, and subjected the tribes to a political process in which the tribal position was weakened.

I am of the opinion that the Land and Natural Resources Division of your department has continued to operate with a conflict of interest in regards to the rights of my clients. For example, Mr. Donald Carr of that division, who was actively involved in the litigation brought by the Columbia River treaty tribes against the United States Department of Commerce for failing to properly regulate the commercial non-Indian ocean fishery, played a lead role in the negotiations that resulted in my clients being returned from federal custody to face tribal charges for illegal fishing arising out of the federal undercover "sting" operation. Mr. Carr insisted that my clients be denied bail by the tribal court system, requiring that they be held in a facility that is substandard by any measure. (Example: the clients were denied exercise, and allowed visitation with immediate family members for fifteen minutes, one day per week through a triple-mesh steel screen). In addition, Mr. James Kilbourne of the Land & Natural Resources Division, has made deliberately false and inaccurate public statements to the largest circulation daily newspaper in the Northwest regarding the convictions of my clients.

On the topic of deliberately false, misleading, and deceptive statements regarding these defendants, you will find that the staff of the United States Attorney for the Western District of Washington, specifically Assistant United Syayes Attorney Stephen Schroeder, has acted in a most reprehensible manner before, during, and after the federal prosecution of these men. I am in the process of compiling a list of the most obvious and flagrent falsehoods publicly uttered by these and other federal officials, and will send you a copy for your review. It is crucial to a full understanding of the injustice that occurred here in 1981 and 1982 that you be fully informed of the deceitful conduct of the federal and state law enforcement officers who conspired to entrap David Sohappy under the Lacey Act Amendments of 1981.

Canadian immigration officials yesterday voted to grant refugee status to a Puyallup Indian who, like David Sohappy, has been a treaty rights activist in this state for many years. While the facts of their prosecutions differ, Bob Satiacum and David Sohappy were both the victims of federal government harrassment that coincided with the election of our former Attorney General, Slade Gorton, to the United States Senate. Mr. Gorton was the foremost "Indian basher" in the history of our state, and ran for the Senate promising to work to undermine treaty rights. His own personal staff was actively involved in the passage of the Lacey Act Amendments of 1981, which became law in November of that year. U.S. Attorney Schroeder admitted in an affidavit in the federal prosecution that: "The instant investigation was begun in anticipation of expected changes in the Lacey Act". Recall that the federal undercover buyer made his debut along the Columbia River on April 13, 1981, more than six months before the Lacey Act was passed!

You will need to familiarize yourself with the barrage of press releases, press conferences, and other false and damaging statements made by the National Marine Fisheries Service regarding the "Salmonscam" that helped to so pollute the local atmosphere that the federal trial had to be moved to Los Angeles. In spite of the fact that the massive conspiracy alleged in the federal indictment (which contains its own full measure of excessive rhetoric) was the subject of a NOT GUILTY finding by the jury, as were the two allegations of tribal law violations, federal prosecutors made false and reckless statements regarding a planned armed uprising at Cooks Landing, Mr. Sohappy's fishing camp. While the statement made terrific grist for the AP and UPI wires, causing David Sohappy and his son to be jailed overnight, it proved to be yet another falsehood aimed at undermining Mr. Sohappy's chances of gaining public support.

The sentences to which the Sohappy's have been subjected, together with the Parole Commission action taken on minimum time, clearly reflect additional governmental misconduct. For example, David Sohappy, Jr. received five years in prison for being convicted of selling 15 fish to the federal buyers, to be followed by five years probation for selling 13 more. The Parole Commission, relying on false and misleading information provided by local federal officials, set a 24 month minimum sentence for the younger Sohappy. Their reasoning was that his conviction involved over $100,000 in economic loss: the conspiracy theory that had failed at trial. To determine how grossly disproportionate these sentences are, you should ask the United States Attorney for the Western District of Washington to provide you with a list of sentences handed out to the more than 200 non-Indians who came before the court for fishing in violation of the seventh United States Supreme Court decision of this century upholding Indian fishing rights. Since Mr. Schroeder also handled those cases, one would hope that the information is easily accessible.

Had these matters been referred to state court for prosecution in 1983, there is no doubt that the cases would have been dismissed. Washington State could not have possible met its burden, under previous Supreme Court rulings, of showing that closure of Indian fishing was necessary for conservation. Rather, the "Salmonscam" operation (brought by the National Marine Fisheries Service at the request of the Washington State Department of Fisheries) would have been seen for what it was: the latest state effort to ignore the supreme law of the land. In light of the jury decision in tribal court that all defendants were entrapped, and that the Sohappy family's free exercise of religion was violated by 1981 and 1982 regulations, there now appears to be no valid reason for holding these treaty fishermen in federal custody. The hypocricy of the use of the Lacey Act Amendments of 1981 to "get" David Sohappy is now beyond dispute.

The shabby and deceitful use of federal authority to abuse Indian treaty rights in the State of Washington, and to target political activists in the Indian community is a national disgrace. I call upon you, acting on behalf of the President of the United States, to look beyond the self-serving and deceitful coverup that you will confront in dealing with the United States Attorney for the Western District of Washington, the National Marine Fisheries Service, and the Washington State Department of Fisheries, to fully and fairly examine the facts. Only then will President Reagan be in a position to right the wrong that was done in this matter, and to prevent our country from becoming an international laughingstock.

Please feel free to contact me if you wish to discuss this matter further. I am prepared to come to Washington, D.C. to meet with you if necessary.

Very truly yours,

Thomas P. Keefe, Jr.

Thomas Patrick Keefe, Jr.
Attorney at Law

TPK/bl

Warm Springs, Oregon 97761 / 503-553-1161

July 17, 1987

Mr. David C. Stephenson
Pardon Attorney
United States Justice Department
5550 Friendship Boulevard
Chevy Chase, MD 20815

RE: Petitions for Commutation of Sentence --
Bruce Anthony Jim, Sr., Federal Prisoner #12851-086
James Lee Wolfe, Federal Prisoner #12866-086
Douglas Ralph Palmer, Federal Prisoner #12853-086

Dear Mr. Stephenson:

Bruce Anthony Jim, Sr., James Lee Wolfe, and Douglas Ralph Palmer are enrolled members of The Confederated Tribes of the Warm Springs Reservation of Oregon serving federal prison sentences for illegal fishing activity on the Columbia River. Each man has recently filed a petition for commutation of sentence. This letter is to express the Warm Springs Tribal Council's support for these petitions and to urge that clemency be granted in each case.

Bruce Jim and James Wolfe have been incarcerated at the Federal Prison Camp at Lompoc, California, since August 8, 1986. Mr. Palmer was recently transferred from Lompoc to a halfway house and will soon be paroled. Mr. Jim is serving a five-year sentence, while Mr. Wolfe and Mr. Palmer are serving three-year sentences. They were convicted under the Lacey Act, 16 USC Sections 3371, et seq., of violating Warm Springs tribal law regulating off-reservation, ceremonial fisheries.

Earlier, the Warm Springs Tribal Council explained the tribe's position on the "salmon scam" prosecutions and the sentences imposed on the Warm Springs fishermen in a letter to the Hon. Jack Tanner dated August 25, 1986. This letter, which was in support of the defendants' Rule 35 motions for reduction of sentence, is attached for your reference. As we stated in our letter to Judge Tanner, the crime which these men were charged and convicted of involved selling ceremonial fish to undercover officers. The fish were lawfully harvested under Warm Springs tribal ceremonial fishing permits. Under Warm Springs tribal law, as well as the law of the states of Oregon and Washington, the fish were not to be sold but were to be used only for tribal ceremonial purposes on the Warm Springs Indian Reservation.

Because thesemen are now serving lengthy federal prison sentences for violating the laws of the Warm Springs tribe, we believe that the views of the Warm Springs tribe concerning their punishment should be given very careful consideration by your office. This is especially true here since the violations of tribal law involved the sale to non-Indians of tribally owned ceremonial fish, thus making the tribe itself the principal victim of the criminal activity.

The Warm Springs Tribal Council strongly believes that clemency should be granted in these cases because of the severity of the sentences. The five-year and three-year sentences imposed on these men are far longer than any other sentences we can recall for fishing violations by either Indians and non-Indians. We note that the non-Indian fish buyer from Kelso, Washington, who was involved in the "salmon scam" prosecutions was sentenced on a mail fraud conviction for sending phony fish tickets to the Washington Department of Fisheries, not for violating the Lacey Act. The Warm Springs prisoners are fishermen by trade with wives and young children to feed and support. Their lengthy federal imprisonment for violating Warm Springs tribal law is working a severe hardship on their families.

The imposition of lengthy prison terms is not the punishment the Warm Springs Tribe would impose for violating our tribal law. If we had been given the opportunity to prosecute these cases, which we were not, we would have been able to impose fines and jail time (but certainly not three to five years), and, most importantly, we could have suspended their treaty fishing rights. That is a punishment even the federal court cannot impose. It is considered within our tribe to be the most severe punishment possible for violating our laws concerning off-reservation treaty fishing.

By the time a decision is made on these clemency petitions, Mr. Jim, Mr. Wolfe and Mr. Palmer will have spent more than a year in federal prison. In our opinion, that is punishment enough for violating our laws concerning the use of tribally owned ceremonial salmon. We hope and pray that you will agree and will recommend to the President of the United States that he exercise his constitutional pardon powers and commute with sentences of Mr. Jim, Mr. Wolfe and Mr. Palmer to the time they have already served in federal custody.

Thank you very much for your careful attention to this matter.

Sincerely,

ZANE JACKSON, Chairman
Tribal Council

Attachment

cc: Hon. Ronald Reagan
Hon. Mark Hatfield
Hon. Robert Packwood
Hon. Bob Smith
Hon. Edwin Meese
Henry Habecht II, Assistant Attorney General, Lands and Natural Resources
Donald Carr, Chief, Wildlife and Marine Resources Section, Lands and Natural Resources Division
Bruce Jim
James Wolfe
Douglas Palmer
Mark Phillips

**GEORGE WATERS**
CONSULTING SERVICES
1010 MASSACHUSETTS AVENUE, N.W.
SUITE 210
WASHINGTON, D.C. 20001

PHONE
(202) 371-1153

August 3, 1987

Mr. Alan Parker, Staff Director
Ms. Patricia Zell, Chief Counsel
Mr. Joe Mentor, Minority Counsel
Senate Indian Affairs Committee
SH-838
Washington, D.C. 20510

Re: Sohappy follow up

Dear Alan, Pat and Joe,

As we have discussed, and pursuant to meetings between representatives of the Yakima Indian Nation and Senators Inouye and Evans, there is now a need for the Senators to begin getting involved in influencing the White House regarding commuting the sentences of the four remaining prisoners. (Mat McConville has been released.)

It is my belief that one of the single strongest arguments that can be made for supporting the commutation of the sentences is the disproportionately lengthy terms of the sentences. For instance, David Sohappy was sentenced to five years after being convicted of illegally selling 28 fish! While we all know that their sentences were disproportionately long we have to be able to prove that point in somewhat of an empirical fashion. I discussed this with Tom Keefe, the prisoner's attorney, and asked if he had material we could use. He indicated that he didn't but that Gene Anderson, the U.S. Attorney in Seattle did. Keefe said that Anderson would not be willing to share such information with him. I speculated that Mr. Anderson would probably be willing to make such information available to Senator Evans and I asked Keefe if he would draft a letter for Senator Evans to consider sending to Anderson. Enclosed is Keefe's proposed draft. As with most of Mr. Keefe's writings on this subject, it is somewhat rhetorical and accusatory (actually the enclosed in fairly mild) but Joe will obviously be the judge of what Senator Evans is comfortable sending. Once we get information back from Mr. Anderson the Senators could then write to the President, (attention Howard Baker, etc. as Senator Inouye indicated). The type of information needed is relative to the present dispositions of the 235 cases involving U.S. v. Washington. How many are Indian? How many non-Indians? What charges were they indicted on? What charges were they convicted of? How many received prison sentences and what were the terms of said sentences and how many were only fined? How much time have they

Messrs. Parker and Mentor
Ms. Zell
Page Two

served and what was the value of the fish or wildlife they were found guilty of illegally taking? The attached document entitled the Two Faces of Justice in Washington State is demonstrative of the arguements that could be put forward.

If you have not read the statement that Mel Sampson submitted to the NCAI mid-year conference in Portland you may want to do so. It was reprinted in the most recent issue of the Yakima Nation Review (see attached, page 4) and is a good summary of what has transpired to date and where we presently stand.

Both Keefe's proposed letter and Mel's statement reference the action of the U.S. Parole Commission in adding time to their minimum sentences. Sohappy, Sr. has had 10 months added to his standard one-third minimum and Sohappy, Jr. has had four months added to his minimum sentence. (As far as I know Messrs. Slockish and Yocash have not been processed.) The reasoning behind this was that they were indicted under conspiracy charges in which the aggregate costs of all fish caught exceeded $100,000. However, they were specifically acquitted of all conspiracy charges, (Sohappy, Jr.'s total take of fish on which he was convicted are valued at $865.00). Enclosed is a copy of a joint letter to the Parole Commission from the Deputy U.S. Attorney who prosecuted the Sohappy's and the Public Defender pointing out that it is unconstitutional to gauge parole dates based on charges on which someone is acquitted. Either the letter arrived too late or the Parole Commission chose to ignore it. I am not sure this isn't a side issue which could be appropriately addressed in an Inouye/Evans letter to the Parole Commission but in either case it would be helpful to have a copy of the pre-sentence reports.

The last two paragraphs of Keefe's draft letter appear oriented toward gathering evidence that will demonstrate that specific federal and state officials conspired to "get" Sohappy and in so doing violated his civil rights. If there ever are Congressional oversight hearings into the application of the Lacey Act against Indians these would be the type of questions that should be posed. However, I am not convinced that the direction in which these paragraphs are leading is necessarily the best course to pursue when one is trying to convince Ronald Reagan to be compassionate. I'll leave that up to your discretion.

Messrs. Parker and Mentor
Ms. Zell
Page Three

I am also enclosing a recent update letter that Keefe sent to the U.S. Pardon Attorney. This letter accurately reflects Keefe's thinking and style on this subject and may contain further information that will be helpful to you.

I am going to draft an Inouye/Evans letter to Reagan prior to receiving any empirical data from Anderson. If we get information from him we can change the letter accordingly. I should have a draft to you shortly.

Let me know your thoughts on this. Thanks.

Sincerely,

George

George Waters

GW:dbj
Enclosures
cc: Mel Sampson

DANIEL K. INOUYE, HAWAII, CHAIRMAN
DANIEL J. EVANS, WASHINGTON, VICE CHAIRMAN

JOHN MELCHER, MONTANA
DENNIS DeCONCINI, ARIZONA
QUENTIN N. BURDICK, NORTH DAKOTA
THOMAS A. DASCHLE, SOUTH DAKOTA

FRANK H. MURKOWSKI, ALASKA
JOHN McCAIN, ARIZONA

ALAN R. PARKER, STAFF DIRECTOR
PATRICIA M. [illegible], CHIEF COUNSEL
JOE MENTOR, JR., MINORITY COUNSEL

**United States Senate**
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

August 18, 1987

Honorable Howard Baker
Chief of Staff to the President
The White House
Washington, D.C. 20500

Dear Howard:

I am writing to call to your personal attention the attached Presidential Petition for Presidential commutation of sentence submitted by four members of the Yakima Indian Nation of Washington State.

This matter originally came to my attention when I traveled to the Pacific northwest earlier this year. Shortly after taking the job as Chairman of the Senate Select Committee on Indian Affairs, I decided to visit the northwest. First, because this was a region of the country that had never been officially visited by the Chairman of this Committee; secondly, to see first-hand the serious economic conditions that exist on the Indian reservations; and finally, to become familiar with Indian treaty fishing rights issues unique to tribes of this region.

When I visited the Yakima Indian reservation, I spent time with the tribal elders who expressed their concern for several of their tribal members who had been prosecuted by federal authorities for exercising their treaty fishing rights. Subsequently, their Chief, the Honorable Melvin Sampson, sent me a copy of the attached letter which recites all of the details and background on this matter. You should know that this cause has been followed closely by other Indian tribes who feel that the integrity of our judicial system and of the long-standing government-to-government relationship between their tribes and the United States Government is being tested by this case.

I believe that their petition for a commutation of sentence has merit and I am sure that when you look into the matter you will agree that simple justice demands an expeditious response to the Yakima Indian Nation.

Thank you for your personal attention in this matter.

Sincerely,

DANIEL K. INOUYE
Chairman

THE WHITE HOUSE
WASHINGTON

1987 OCT 28 PM 2: 02

October 26, 1987

Dear Dan:

I am truly sorry for the delay in responding to your letter enclosing a copy of your petition to the President requesting commutation of the Federal prison sentences imposed upon four members of the Yakima Indian Nation of Washington State. I can assure you that this matter will be given every consideration by the proper officials at the Department of Justice and that A. B. Culvahouse is aware of the petition.

With best wishes,

Sincerely,

Howard H. Baker, Jr.
Chief of Staff to the President

The Honorable Daniel K. Inouye
United States Senate
Washington, D.C. 20510

**Thomas Patrick Keefe, Jr.**
**Attorney at Law**

123 Third Avenue South
P.O. Box 4447
Seattle, Washington 98104
(206) 447-9546

November 30, 1987

Patricia Zell, Esquire
Chief Counsel
Senate Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Re: David Sohappy, Sr., et. al.

Dear Pat:

I have attached a memorandum regarding possible options that might be explored with Howard Baker when Chairman Inouye meets with him to discuss the above-entitled matter. I am also sending along originals of two recent pieces of coverage regarding the case which appeared last week in the Seattle newspapers. I understand that both the Spokesman-Review (Spokane) and the Oregonian (Portland) will be sending reporters to visit with David Sohappy, Sr. to discuss his physical condition.

Following the prayer vigil that took place last week, JoAnn Kauffman and several other Indian community leaders met with the local Bureau of Prisons official, Mr. John Sugrue, who has denied the medical furlough requests. He is apparently relying on some verbal opinion from Dr. Baird (who has been treating Mr. Sohappy's diabetes, and has had no responsibility for management of the paralysis). In response to a question from JoAnn, Mr. Sugrue was unable to identify whether Dr. Baird has a specialty in the field of medicine. In addition, Mr. Sugrue indicated that decisions regarding this matter are being made in Washington, D.C., which might explain why John Mitchell could get a medical furlough and David Sohappy cannot!

I sincerely hope that the issues of the medical furlough (where ample authority currently exists to have it granted) and the commutation can be bifurcated in the short run if necessary. David Sohappy, Jr., Wilbur Slockish, and Leroy Yocash are all relatively young and vigorous. Time is rapidly running out for David Sohappy, Sr., and the current incarceration is only accelerating matters. Thank you again for your time and efforts.

Very truly yours,

Thomas P. Keefe Jr.

Thomas Patrick Keefe, Jr.
Attorney at Law

December
~~November~~ 1, 1987

Patricia Zell, Chief Counsel
Senate Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Re: Yakima Fishermen, Request for Presidential Commutation

## BACKGROUND

The federal prison sentences that are the subject of the request are clearly disproportionate with any similar sentences given to non-Indians for similar conduct in Washington state courts. The very fact of their severity, particularly with respect to David Sohappy, Sr. (five year sentence with a thirty month minimum, followed by five years probation upon conviction of selling 317 fish) and David Sohappy, Jr. (five year sentence with a twenty four month minimum, followed by five years probation upon conviction of selling 28 fish) raise serious questions regarding the federal role in "Salmonsçam" before, during, and after the trial. The fact that David Sohappy, Sr. has been one of the most visible treaty fishing rights activists in the Pacific Northwest was not lost on the state fisheries officials who asked the federal National Marine Fisheries Service to conduct the "sting". The operation's budget approached $350,000, and culminated in a spectacular and highly publicized raid on the Sohappy family's tiny home at Cooks Landing, Washington on April 17. 1982. The search warrant, entitled "The United States of America versus The Sohappy Family Dwelling at Cooks Landing Washington" was served by several carloads of heavily armed special agents, some of whom were flown in from as far away as the Virgin Islands for the assault. They even built a model of the Sohappy home at an abandoned hatchery on Mt. St Helen's and practiced raiding it. I give you this historical vignette in the hope that you will acquire a feel for the excess that has characterized the pursuit of David Sohappy, and which continues to be evidenced in his treatment since being taken into federal custody almost 16 months ago.

## THE COMMUTATION REQUESTS

These were sent to the President on June 23, 1987. [Cover letter attached] It is of some concern that the apparent source of information for the Justice Department Pardon Attorney includes some of the very people responsible for the scapegoating and harrassment of David Sohappy. If Baker is not yet able to see the merit in commutation, we believe the President should send a designee to the Northwest to visit the scene, interview interested parties, and make a recommendation to President Reagan. Judge Clark did just such an investigation regarding the Navajo-Hopi dispute at one time.

### THE MEDICAL FURLOUGH REQUEST

We have twice been denied a medical furlough for David Sohappy, Sr., in spite of medical advice from Deaconess Hospital and a treating physician, Dr. Daniel Schaefer, both of whom felt that his rehabilitation from the stroke would be better addressed through his Feather Religion prayer ceremonies. The religion is traditional among mid-Columbia River Indians, and David Sohappy is the headman of the sect. These people have a religious prohibition of drugs, alcohol and violent behavior, and David Sohappy is as strict in his adherence to his religion as he has been to his treaty fishing rights.

### SECURITY LEVELS FOR SLOCKISH & YOCASH

Both Slockish & Yocash nave been hauled off to "Level II" prisons, because they did not report as ordered to begin their federal sentences in August 1986. They should now be returned to Geiger Field to await the outcome of the commutation request. These men have been kept far from home for months, have been no trouble to the prison system, and no useful purpose is being served by keeping them in Minnesota (Slockish) and Texas (Yocash).

The support for commutation of these sentences is broad-based, and includes editorial support from two conservative daily papers, both of which endorsed Ronald Reagan in 1980 and 1984. The United States/Canada salmon treaty has helped to return record salmon runs to the Columbia River the last several years. The friction between competing user groups has dissipated considerably, and the climate of anti-Indian hysteria that accompanied the 1978 United States Supreme Court ruling affirming treaty fishing rights has subsided.

The Lacey Act prosecution of these treaty fishermen was unique. Federal action was solicited by the Washington Department of Fisheries, an agency with a long history of anti-Indian conduct. The "sting" began "in anticipation of expected changes in the Lacey Act" which became law seven months after the operation began. There is no indication in the legislative history of the Lacey Act Amendments that Congress intended this level of incarceration for this level of activity, nor is there any indication that the Congress was aware of the state plan to get David Sohappy with a change in federal law. Yesterday in federal court in Spokane, Judge Robert McNichols ordered a hearing regarding the discriminatory use of the Lacey Act against treaty Indians for alleged 1987 violations. Once again, we are seeing Indians charged with federal felonies, and non-Indians (restaurant owners) being ignored. Howard Baker was an original co-sponsor of the Lacey Act Amendments, and I find it hard to believe that he had this type of activity in mind.

In its 1981 report regarding treaty rights, the United States Commission on Civil Rights made specific findings regarding this fishing rights battle in our state. The findings included:

**"2. The Federal Government as guarantor of Indian fishing rights has not effectively protected and assured those rights.**

**3. Throughout this century, the State of Washington has utilized its governmental authority in such a manner as to deprive Indians of their fishing rights.**

**4. Indian tribes have been blamed erroneously for the crisis concerning the scarcity of fish.**

**5. The fishing rights conflict, which is a dispute over property rights, has racial dimensions."**

Two months before the civil rights commission report was issued, the federal government, at the request of Washington State, began a federal "sting" in anticipation of a federal law change being pushed by our former Attorney General, Slade Gorton. Not one Indian tribe was asked to testify on the bill. In addition to freeing the Salmonscam defendants, the Senate needs to do Lacey Act oversight. As long as this law is in place, in the words of Chairman Inouye, "If it can happen to Yakima people, it can happen to you".

DANIEL K. INOUYE, HAWAII, CHAIRMAN
DANIEL J. EVANS, WASHINGTON, VICE-CHAIRMAN

JOHN MELCHER, MONTANA
DENNIS DeCONCINI, ARIZONA
QUENTIN N. BURDICK, NORTH DAKOTA
THOMAS A. DASCHLE, SOUTH DAKOTA

FRANK H. MURKOWSKI, ALASKA
JOHN McCAIN, ARIZONA

ALAN R. PARKER, STAFF DIRECTOR
PATRICIA M. ZELL, CHIEF COUNSEL
JOE MENTOR, JR., MINORITY COUNSEL

United States Senate
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

December 10, 1987

The Honorable H. Howard Baker, Jr.
Chief of Staff
The White House
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Senator Baker:

We are enclosing a letter that has been delivered today to Mr. J. Michael Quinlan, Director of the Bureau of Prisons, regarding the Bureau's initiation of action yesterday to transfer Mr. David Sohappy Sr., a 62-year-old inmate at the Geiger Correctional Facility in Spokane, Washington, to Terminal Island, California for purposes of further medical evaluation. As you know from our previous communications with you related to Mr. Sohappy's incarceration, Mr. Sohappy suffered a stroke in August and his medical condition continues to worsen. Dr. Daniel Schaffer, a physician with whom the Bureau of Prisons has contracted, has examined Mr. Sohappy on at least four occasions in the last five months, and has rendered his professional opinion that any attempt to transfer Mr. Sohappy would further undermine his already failing health. We understand that there are medical facilities within close proximity of the Geiger Correctional Facility that have the capacity to conduct any further medical examinations that may be warranted, and thus that transfer to another area of the country for the purpose of conducting medical evaluations is not necessary.

We have been advised that upon learning of the proposed transfer action, Chief Judge Robert McNichols of the U.S. District Court for the Eastern District of Washington, verbally directed the United States Marshalls not to remove Mr. Sohappy, pending further action of the court. Judge McNichols has set a hearing in the matter of In Re the Custody of David Sohappy Sr. to consider a motion for a temporary restraining order to prevent Mr. Sohappy's transfer, on Friday, December 11, 1987.

Over the past several months, we have worked with the Yakima Indian Nation and the Department of Justice to attempt to reach a disposition of the Sohappy prosecution which respects the valid interests of the Yakima Indian Nation. During our discussions, representatives of the Department of Justice agreed in writing that Mssrs. Sohappy were to remain at a facility in the State of Washington. We would view any effort to move Mr. Sohappy to another facility as a breach of that agreement.

We would very much appreciate the support of the White House in the actions we have requested of the Bureau of Prisons, and we wish to renew our request that we meet with you on this matter at your earliest possible convenience.

Sincerely,

Daniel J Evans

DANIEL J. EVANS
Vice-Chairman

DANIEL K. INOUYE
Chairman

DANIEL K. INOUYE, HAWAII, CHAIRMAN
DANIEL J. EVANS, WASHINGTON, VICE-CHAIRMAN

JOHN MELCHER, MONTANA
DENNIS DeCONCINI, ARIZONA
QUENTIN N. BURDICK, NORTH DAKOTA
THOMAS A. DASCHLE, SOUTH DAKOTA

FRANK H. MURKOWSKI, ALASKA
JOHN McCAIN, ARIZONA

ALAN R. PARKER, STAFF DIRECTOR
PATRICIA M. ZELL, CHIEF COUNSEL
JOE MENTOR, JR., MINORITY COUNSEL

United States Senate
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

December 10, 1987

Mr. J. Michael Quinlan
Director
Bureau of Prisons
U.S. Department of Justice
320 First Street, N.W.
Washington, D.C. 20534

Dear Director Quinlan:

We have been advised that Mr. John Sugrue, Community Program Manager of the Bureau of Prisons in Seattle, and Mr. Dan Fitzgerald, Supervisor of Community Programs for the Bureau of Prisons in Belmont, California initiated action yesterday to transfer David Sohappy Sr., a 62-year-old inmate in the Geiger Correctional Facility in Spokane, Washington, to Terminal Island, California for purposes of further medical evaluation. We are also advised that because of the precarious nature of Mr. Sohappy's medical condition, Chief Judge Robert McNichols of the U.S. District Court for the Eastern District of Washington, verbally directed the United States Marshalls not to remove Mr. Sohappy, pending further action of the court. Judge McNichols has set a hearing in the matter of In Re the Custody of David Sohappy Sr. to consider a motion for a temporary restraining order to prevent Mr. Sohappy's transfer, on Friday, December 11, 1987, at 2:00 p.m.

It is our understanding that Mr. Sohappy Sr. has been examined by a physician with whom the Bureau of Prisons has contracted, Dr. Daniel Schaffer, on at least four occasions within the last five months, and that it is Dr. Schaffer's professional opinion that any attempt to transfer Mr. Sohappy would further undermine his already failing health. Mr. Sohappy suffered a stroke in August of this year, and was hospitalized from August 28, 1987 through August 31, 1987. Upon discharge, the report issued by the medical staff indicated that "It is the medical staff's recommendation that this patient be sent home to be with his family and with his congregation of the feather religion. There is therapy with this religion that he believes will help him and [which is] certainly not contraindicated medically." We further understand that there are medical facilities within close proximity of the Geiger Correctional Facility that have the capacity to conduct any further medical examinations that may be warranted, and thus that transfer to another area of the country for the purpose of conducting medical evaluations is not necessary.

Over the past several months, we have worked with the Yakima Indian Nation and the Department of Justice to attempt to reach a disposition of the Sohappy prosecution which respects the valid interests of the Yakima Indian Nation. During our discussions, representatives of the Department of Justice agreed in writing that Mssrs. Sohappy were to remain at a facility in the State of Washington. We would view any effort to move Mr. Sohappy to another facility as a breach of that agreement.

Therefore, we would respectfully request that as Director of the Bureau of Prisons, you direct Bureau of Prisons field officials to take no further action to transfer David Sohappy Sr., and that additional medical evaluations be conducted in the Spokane area. We would appreciate your immediate attention to this matter.

Sincerely,

Daniel J Evans

DANIEL J. EVANS
Vice-Chairman

DANIEL K. INOUYE
Chairman

**U.S. Department of Justice**

**Federal Bureau of Prisons**

87 DEC 28 PM 1:14

*Washington, DC 20534*

DEC 22 1987

Honorable Daniel J. Evans
Vice-Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Dear Senator Evans:

Thank you for your inquiry of December 10, 1987, regarding Mr. David Sohappy, Sr., who is currently confined at the Geiger Correctional Facility, Spokane, Washington. You have requested that we take no further action to transfer Mr. Sohappy to the Federal Correctional Institution, Terminal Island, California, and that additional medical evaluations be conducted in the Spokane area.

We have arranged to contract with a Board certified Internist who will evaluate Mr. Sohappy to determine the extent of any specialized care he may require. If the results of the specialist's evaluation indicates that Mr. Sohappy can be appropriately treated on an out-patient basis, he will remian at the Geiger facility. If results indicate he needs in-patient care, we will transfer him to a Bureau medical facility. An appointment with the Internist is being arranged. The Bureau of Prisons will make full utilization of its resources to meet Mr. Sohappy's appropriate treatment needs.

I hope this information will satisfy your concerns in this case. If you have any further questions or need additional information, please do not hesitate to contact us.

Sincerely,

J. Michael Quinlan
Director

**U.S. Department of Justice**

**Federal Bureau of Prisons**

1987 JAN -7 PM 11: 3

*Washington, DC 20534*

January 6, 1988

Honorable Daniel J. Evans
Vice-Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Dear Senator Evans:

Reference is made to our letter of December 22, 1987, regarding Mr. David Sohappy, who is currently confined at the Geiger Correctional Facility, Spokane, Washington. We had advised you at that time, Mr. Sohappy's anticipated transfer to the Federal Correctional Institution, Terminal Island, California, for medical evaluation and treatment would be deferred pending an evaluation by an Internist in the Spokane area.

On December 22, 1987, Mr. Sohappy was evaluated by a Board certified Internist who concluded Mr. Sohappy has made a good recovery from a cerebral vascular accident, which occurred in approximately August, 1987. The recommendation was made for further evaluation by a specialist in physical therapy to determine whether or not Mr. Sohappy has reached maximal rehabilitation. The examining physician believes that Mr. Sohappy's treatment needs can be met with periodic medical attention which can be obtained in the local area. Therefore, Mr. Sohappy will remain at Geiger and arrangements will be made for further evaluation and treatment by a physical therapist.

I hope that this information adequately explains Mr. Sohappy's current status. If you have any further questions or need additional information, please do not hesitate to contact me.

Sincerely,

J. Michael Quinlan
Director

DANIEL K. INOUYE, HAWAII, CHAIRMAN
DANIEL J. EVANS, WASHINGTON, VICE-CHAIRMAN

JOHN MELCHER, MONTANA
DENNIS DeCONCINI, ARIZONA
QUENTIN N. BURDICK, NORTH DAKOTA
THOMAS A. DASCHLE, SOUTH DAKOTA

FRANK H. MURKOWSKI, ALASKA
JOHN McCAIN, ARIZONA

ALAN R. PARKER, STAFF DIRECTOR
PATRICIA M. ZELL, CHIEF COUNSEL
JOE MENTOR, JR., MINORITY COUNSEL

United States Senate
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

FOR IMMEDIATE RELEASE:
December 18, 1987

CONTACT: Monica Thompson
(202)224-3431
Kimberly Craven
(202)224-2251

## SENATORS EVANS AND INOUYE MEET WITH WHITE HOUSE OFFICIALS TO SEEK RELEASE OF YAKIMA FISHERMAN

Senator Daniel K. Inouye (D-Hawaii) and Senator Daniel J. Evans (R-Wash.) today met with White House officials and leaders of the Yakima Indian Nation to seek the release of four Yakima Indians imprisoned for illegal fishing. Attending the meeting with the two Senators were White House Chief of Staff Howard Baker, Jr. and Attorney General Edwin Meese III. Also in attendance at the meeting were Yakima General Council Chairman Philip Olney and Tribal Council Chairman Melvin Sampson.

According to both Senators, the meeting at the White House ended on a tentative but positive note. Attorney General Meese assured Senator Inouye, Chairman of the Senate Select Committee on Indian Affairs, and Senator Evans, Vice-Chairmen of the Committee, that an answer would be forthcoming early next week about the possible early release of the Yakima fishermen.

"Our meeting was very positive," said Senator Evans. "I am grateful for the attention paid to the matter by the highest levels of the Administration. Senator Baker and Attorney General

(MORE)

Meese were very courteous. They were eager to hear first hand the concerns voiced by the Yakima tribal leaders."

"We had a very amiable, forthright discussion of this problem," said Senator Inouye. "I am encouraged by our discussions with Senator Baker and Attorney General Meese. They have assured us of an early response to our request."

David Sohappy, Sr., his son, David Sohappy, Jr., and three other Yakima fishermen were convicted in 1982 of violating the Lacey Act. They were sentenced to varying federal prison terms, ranging from one to five years. The Lacey Act provides federal criminal penalties for violations of state and tribal fish and game laws. Both Senators have recently expressed concerns that the sentences received by the Yakima fishermen were ~~grossly~~ ~~dispro~~portionate to the crimes they committed.

excessive

& have sought prez commutation of the sentences

THE WHITE HOUSE
WASHINGTON

Copy to Joe [illegible]
Mentor - Keep
in Dept's files
done
2/1

ML

87 JAN 28 PM 1:18

January 27, 1988

Joe -
For
your
files

Dear Senator Evans:

I have related our telephone conversation of last week about David Sohappy, Sr., to Deputy Attorney General Arnold Burns. Arnie Burns assures me that he will examine the concerns which you voiced (on your behalf and on behalf of Senator Inouye) and that his office will be in communication with you. As you know, the procedure being explored contemplates a possible Justice Department petition to the trial judge for reduction in sentence rather than the exercise of the President's commutation powers.

I share your desire that this matter be resolved appropriately and equitably. Please feel free to call me at any time.

Sincerely,

AB Culvahouse

Arthur B. Culvahouse, Jr.
Counsel to the President

The Honorable Daniel J. Evans
United States Senate
Washington, D.C. 20510

cc Joe M

DOC
TOPIC
SUBTOPIC
PCD
TICKLER
SUBJECT
REFERRED TO
DUE DATE

**NEWS RELEASE**
U.S. Senator Dan Evans

324 Hart Senate Office Building
Washington, D.C. 20510

Date: February 22, 1988

Contacts: Lee Keller Reis
Press Secretary
(202) 224-3431

Monica L. Thompson
Deputy Press Sec.
(202) 224-3415

For Immediate Release

## DEPARTMENT OF JUSTICE AGREES TO SEEK RELEASE OF YAKIMA FISHERMEN

U.S. Senators Daniel J. Evans (R-WA) and Daniel K. Inouye (D-HI) were informed today that the Department of Justice has agreed to seek the release from Federal prison of David Sohappy Sr., and David Sohappy, Jr. Both men currently are serving Federal prison sentences for violations of the Federal Lacey Act which provides federal criminal penalties for violations of state and tribal fish and game laws.

"We are very pleased to learn that the Department of Justice has agreed to seek the release of David Sohappy Sr. and his son," the two Senators said. "The sentences these men received were grossly disproportionate to the crimes of which they were convicted."

The Senators were informed that the Justice Department, through the Bureau of Prisons, will present a motion to Federal District Court Judge Jack Tanner, asking that he reduce the sentences of both men to the time they already have served. The Justice Department decision follows recent acknowledgement by Sohappy and his son of their obligation to abide by relevant fish and game laws. Both Senators are hopeful that Tanner will act quickly and in accordance with the Justice Department's recommendation.

"The events which gave rise to the present situation are merely the symptoms of a much bigger problem," said Evans and Inouye. "David Sohappy and his son are not the reasons for conflict on the Columbia River. Instead the problems are the lack of river access for Indian and non-Indians alike and the confused jurisdiction over the activities of Indian fishermen."

Sohappy and his son and three other Yakima fishermen were convicted in 1982 of violating the Lacey act. They were sentenced to varying federal prison terms, ranging from one to five years by Judge Tanner and he retains jurisdiction under a Federal statute to reduce their sentences. Sohappy and his son have received five year sentences and have been in Federal custody since May, 1986.

Sohappy

DANIEL K. INOUYE, HAWAII, CHAIRMAN
DANIEL J. EVANS, WASHINGTON, VICE CHAIRMAN

JOHN MELCHER, MONTANA
DENNIS DeCONCINI, ARIZONA
QUENTIN N. BURDICK, NORTH DAKOTA
THOMAS A. DASCHLE, SOUTH DAKOTA

FRANK H. MURKOWSKI, ALASKA
JOHN McCAIN, ARIZONA

ALAN R. PARKER, STAFF DIRECTOR
PATRICIA M. ZELL, CHIEF COUNSEL
JOE MENTOR, JR., MINORITY COUNSEL

**United States Senate**
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

March 11, 1988

The Honorable Ronald Reagan
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C.

Dear Mr. President:

We are writing on behalf of two members of the Yakima Indian Nation, David Sohappy, Sr., and David Sohappy, Jr.. These two Indian fishermen were convicted of selling salmon and steelhead caught out of season, in violation of tribal fishing regulations and, because of that, the Federal Lacey Act. Both men currently are serving five year sentences in federal prison.

We understand that David Sohappy, Sr. and his son have petitioned for commutation of their sentences. We strongly support their request for Presidential commutation, and urge you to act quickly to grant commutation. We believe the sentence David Sohappy Sr. received was grossly disproportionate to the crimes of which he was convicted. The sentence given to David Sohappy Jr. was even more severe given the facts of his particular case. Furthermore, we think it was wrong for them to be sent to federal prison in the first place to serve sentences for what essentially were violations of tribal law.

Although only simple fishermen, David Sohappy and his son have been the subject of much controversy both in legal circles and the popular press. Along with a number of their fellow Yakima Indians, David Sohappy and his son have been embroiled in a continuing battle with both the federal and state governments over the exercise of treaty fishing rights along the Columbia River. The name Sohappy has been associated with landmark litigation to clarify Indian treaty rights. And their plight has been the subject of editorial comment in almost every major daily newspaper in the Pacific Northwest.

Recently, the Justice Department, through the Bureau of Prisons, filed a motion with the sentencing judge asking that their minimum sentences be reduced to the time they already had served. Unfortunately, however, the sentencing judge denied the Justice Department motion. According to the Justice Department motion to Federal Judge Jack Tanner,

"The Sohappys have served more than a year in

> confinement. In August 1987, David, Sr., suffered an incapacitating stroke. Although he has now made substantial recovery, it appears he may suffer some residual disability from the stroke on a permanent basis. A compassionate review suggests that he be discharged into the care of his family."

There are other factors which suggest that these sentences should be reduced. First, similar cases involving non-Indians have resulted in more lenient sentences. In January 1987 for example, two cases prosecuted in state court by the Washington State Department of Fisheries for the sale of $20,000 worth of sport-caught salmon resulted in sentences of 30 days in jail for one defendant and a one year suspended sentence and a $1,000 fine for another defendant. Second, we have been informed that the United States Parole Commission has reduced the applicable sentencing guidelines. Had the present guidelines been in effect when these men were sentenced, and had the sentencing judge imposed sentences within those guidelines, David Sohappy and his son would already have been released.

For these reasons, we urge you to take the action that is necessary to help us move beyond the facts of these particular cases. The United States, the states of the Pacific Northwest, and the Tribes have worked together successfully to improve the institutional arrangements that previously existed. In the future, federal and state law enforcement officials will work in close cooperation with tribal enforcement officials to assure an adequate response by referring cases like these to tribal courts for prosecution.

Mr. President, Indian tribes themselves, and their members, have the greatest interest in the preservation of the fishery resources. They have relied on the fishery for their way of life since time immemorial. And they have demonstrated their commitment to the continued strength of salmon and steelhead resources time and time again. We believe they will continue to do so in the future. The Federal government and the states are just now beginning to recognize and appreciate this very simple fact.

Sincerely,

Daniel J Evans

DANIEL J. EVANS
Vice-Chairman

DANIEL K. INOUYE
Chairman

Sohappy

Jz

**U.S. Department of Justice**
**Office of the Deputy Attorney General**

88 MAR 23 PM 5:52

---

The Deputy Attorney General
Washington, D.C. 20530

March 17, 1988

The Honorable Daniel J. Evans
United States Senate
Washington, D.C. 20510-4702

Dear Senator Evans:

During February, you requested that I look into the matter of the sentences received by David Sohappy, Sr. and David Sohappy, Jr. for violations of federal fishery conservation laws. On March 3, 1988 the Department of Justice filed a motion for reduction of sentence in the matter of United States v. Sohappy, CR 82-517, before Judge Tanner in the Western District of Washington. In this motion, the United States attempted to secure the release of the Sohappys. Regrettably, Judge Tanner has denied our motion.

At this point, I understand that the Sohappys are considering an appeal of their parole eligibility determinations before the Parole Commission. My staff will follow this matter closely in the future and I would be pleased to keep your office informed.

Sincerely,

Arnold I. Burns
Deputy Attorney General

THE WHITE HOUSE
WASHINGTON

[illegible] 12:50

March 24, 1988

Dear Mr. Chairman:

Thank you for your March 11 letter to the President, cosigned by Senator Daniel J. Evans, on behalf of David Sohappy, Sr., and David Sohappy, Jr., who are interested in obtaining a Presidential pardon.

I appreciate knowing of your interest on behalf of Mr. Sohappy, Sr., and Mr. Sohappy, Jr., and have shared a copy of your letter with the Office of the Pardon Attorney. I am confident your letter will receive prompt attention and every consideration.

With best wishes,

Cordially,

Alan –

Alan M. Kranowitz
Assistant to the President

The Honorable Daniel K. Inouye
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

○